Russia’s Labor Pains: The Slow Creation of a Culture of Enforcement

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Abstract

This Article offers a general examination and analysis of Russian labor law, including its historic origin and current status, and it also examines the existing enforcement mechanisms for its provisions. It also provides a comparison of Russian labor law and enforcement to the labor regulations and enforcement in four other countries: the United States of America, the United Kingdom, Australia, and Mexico. The Article concludes that Russia’s failure to comply with and enforce its labor regulations is deeply rooted in the culture’s historic distrust and disrespect for the law that was typical during Soviet times and continues into the current legal framework. It further offers a prediction for the future development of Russia’s labor law and legal culture. More specifically, Part I discusses the transition of labor laws in Russia, including the creation and development of the Soviet/Russian Labor Code and its substantive provisions. Part II provides an overview and analysis of the Russian legal culture and enforcement of its labor law. Part III compares Russian labor law and enforcement mechanisms with that of the United States, the United Kingdom, Australia, and Mexico. Finally, Part IV provides a conclusion predicting the future path of Russian labor law and legal culture.
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Even when laws have been written down, they ought not to remain unaltered.
Aristotle

INTRODUCTION

In the former Soviet Union, a worker was entitled to a job.1 He often found himself, however, locked into a position he could not easily resign.2 The role of the State was to provide employment for people, whether those jobs were needed or not. Salaries were set by the State; there was no competition for workers between enterprises; and the State could not really punish workers for failing to accomplish the state-established minimum requirements generally referred to as the “norms.”3 In fact, sala-

* Assistant Professor of Law, South Texas College of Law, Houston. This Article, along with all of my academic work, is dedicated to the precious memory of my father, Dr. Vladimir Z. Parton. As always, I am truly grateful to my husband and my mother for their love and support. Furthermore, I would like to thank Professors Adam Gershewitz, Margit Livingston, and Julie Spanbauer for their helpful suggestions. I also would like to express a special gratitude to my research assistant Kate Marinacci for her invaluable assistance in preparation of this Article and my thanks go to Igor Dubinsky, Leah Sullivan, and Darcie Cobden for their help and feedback.


2. See Mervyn Matthews, Poverty in the Soviet Union: The Life-Styles of the Underprivileged in Recent Years 109 (1986); Bliss, supra note 1, at 268-69 (describing barriers to leaving job); see also William Moskoff, Hard Times: Impoverishment and Protest in the Perestroika Years 161-62 (1993) (noting job security during perestroika era).

ries and competition did not play an important role during the Soviet period (that took place between the years of 1917-91) and neither did the rule of law, which was rejected in concept because of its “bourgeois” origin. Moreover, the population lost trust in courts and judges, viewing them as objects that the Party used to control the people. Despite all that, the initial 1970 version of the Soviet Labor Code was the official law and continued to remain in force even after Mikhail Gorbachev came to power in 1985 and started conducting a number of major structural economic reforms, commonly known as perestroika.

After the formal dissolution of the Soviet Union on December 31, 1991, it became clear that the post-Soviet Labor Code was a carryover from the Communist regime, and it was not adapted to the free market. There arose a conflict of realities. Employees expected the State to take care of them as it always had. The emergence of free market entrepreneurs and companies, however, led to a new job market where jobs were no longer created for employees; instead, companies sought qualified applicants. The high rate of unemployment, as well as a shortage of jobs and pay, led to a rapid decrease in the average standard of living and welfare of society. The law finally changed in 2002 to accommodate the realities of the emerging free market, but it still retained some of the nuances of its Soviet grandfather. Scholars disagree on whether the existing law is effective and properly


5. Kathryn Hendley, Trying to Make Law Matter: Legal Reform and Labor Law in the Soviet Union 137-38 (1996) ("[Soviet law was viewed] as a one-way projection of state authority that reflected the interests of those in power. Similarly, the courts were expected to toe the line. [Their] consistent failure to stand up to the Party . . . undoubtedly contributed to undermining the courts’ legitimacy in the eyes of the citizenry."); see also id. at 122-26 (detailing Party influence over courts in pre-perestroika era).


7. See Bliss, supra note 1, at 298-311 (describing significant reforms under the 1992 amendments).


9. Id.
serves the needs of Russian society.  

This Article offers a general examination and analysis of Russian labor law, including its historic origin and current status, and it also examines the existing enforcement mechanisms for its provisions. It also provides a comparison of Russian labor law and enforcement to the labor regulations and enforcement in four other countries: the United States of America, the United Kingdom, Australia, and Mexico. The Article concludes that Russia's failure to comply with and enforce its labor regulations is deeply rooted in the culture's historic distrust and disrespect for the law that was typical during Soviet times and continues into the current legal framework. It further offers a prediction for the future development of Russia's labor law and legal culture. More specifically, Part I discusses the transition of labor laws in Russia, including the creation and development of the Soviet/Russian Labor Code and its substantive provisions. Part II provides an overview and analysis of the Russian legal culture and enforcement of its labor law. Part III compares Russian labor law and enforcement mechanisms with that of the United States, the United Kingdom, Australia, and Mexico. Finally, Part IV provides a conclusion predicting the future path of Russian labor law and legal culture.

I. TRANSITION OF LABOR LAWS IN RUSSIA

The regulation of labor law and capital markets reflects a particular country's political and economic structure. In fact, it has been concluded that "richer countries regulate labor less than poorer countries do." Moreover, a more substantial regulation of the labor force is associated with a greater "unofficial


11. See Daniel R. Fischel, Labor Markets and Labor Law Compared With Capital Markets and Corporate Law, 51 U. Chi. L. Rev. 1061, 1061 (1984). The Article provides a discussion of differences between "labor and capital markets" and between "labor and corporate law." It is of interest that one scholar argues that although there are some differences between capital and labor markets, "they do not justify the differences between labor and corporate law." Id. at 1061.

12. Juan Botero et al., The Regulation of Labor 1 (Nat'l Bureau of Econ. Research, Working Paper No. 9756, 2003) (containing survey results that reveal investigation of labor, market, and social security regulations in eighty-five countries and revealing that wealthier countries have been found to have "more generous social security systems.").
economy, lower labor force participation, and higher unemployment, especially of the young.\footnote{Id. at 2. When the State takes ownership, the government takes exclusive control over the activity. Simeon Djankov et al., The New Comparative Economics, 31 J. COMPARATIVE ECON. 595, 601 (2005).}

A major distinction between common and civil law countries' reactions to market failure is that common law countries normally rely on private contract and litigation, while civil law countries expect their government to supervise the market directly.\footnote{Botero, supra note 12, at 5.} Specifically, poor countries must then issue regulations that protect workers from being terminated by employers, while wealthier countries provide retirement benefits, unemployment insurance, and other protections that can be covered by raising taxes.\footnote{See id. at 8. In contrast, common law countries rely on free markets and private contracts. Id.}

A country's labor and employment force regulation, therefore, should be studied in the context of the country's history and legal system; it cannot be analyzed in isolation. This Article now turns its focus to the development and current status of labor and employment law and its enforcement in Russia.

**A. Historic Role of Labor Law in Russia**

Similar to classic "civil law" countries, socialist countries rely on heavy regulations and state ownership.\footnote{See id. at 1.} Moreover, countries that originated through socialism have a much higher level of regulation than do countries that originated in common law.\footnote{Id. at 25.} Scholars disagree on whether heavy labor regulations are beneficial to the worker. For example, according to some efficiency theories, "heavier regulation of labor markets should be associated with better, and certainly not worse, labor market outcomes."\footnote{Id. The empirical studies involve variables such as mandatory minimum daily rest, and days of annual leave with pay in manufacturing (a measure of the length of the annual paid leave in manufacturing after twenty years of employment). See id. at Table I. The studies examine countries such as Russia, Romania, India, and the United Kingdom and they show correlations between the political and economic constraints and legal origin, using variables. See id. at Tables II, VIII.} This conclusion, however, has been criticized and contradicted by a number of empirical studies.\footnote{Id. at 5.} Like other socialist countries, the former Union of Soviet Socialist Republics
government had centrally regulated its employer-employee relations. As a result, private employment contracts were of little importance as there was no need to distinguish between individual employment contracts. In contrast, private contracts are of vital importance today as the Russian economy and political system have undergone a major transition to a market-type economy. On a bigger scale, the collapse of the socialist system has “left the new Russian legislature the formidable task of rewriting existing laws and formulating new legislation.” The country’s transition from the socialist regime to a market-oriented economy entailed numerous reforms in the labor and employment law area. In fact, it is argued that Russia’s current labor and employment laws are “much more stringent than those of other countries with transition economies.”

A major challenge accompanying the transition is the Russian population’s historical lack of faith and commitment to the rule of law. First, the rule of law was generally rejected during the Soviet period. Second, the Communist Party was able to influence the courts and control the appointment of judges. As such, the people lost trust in the legal system, viewing it as an object that the Party used to control them. The population’s lack of faith in the law and courts resulted in its attempts to elude the written rules whenever possible thus making the environment “conducive to illegal labor relations.” Scholars argue, however, that the development of the Russian labor market is distinguishable from other countries that are undergoing transi-

20. After the Communist Revolution of 1917, Russia became a part of the Union of Soviet Socialist Republics (“USSR”).
22. Id.
23. See id.
25. See id.
27. See Kathryn Hendley, The Spillover Effects of Privatization on Russian Legal Culture, 5 TRANSNAT’L L. & CONTEMP. PROBS. 39, 42 (1995) (stating the rule of law was rejected because of its “bourgeoisie” origin).
28. See id.
29. Id.
30. Kirichenko & Kudiukin, supra note 26, at 73.
tions in their economy, such as Central and Eastern Europe.®

B. Creation & Development of the Russian Labor Code

1. Soviet Time

Some authors have attempted to explore the interconnection between the "intellectual elite" and regular working people in the last decade of existence of the Russian Empire. The debate is whether Russian intellectuals and workers were in a "constant dialogue from the reign of Alexander II to the fall of the imperial system in 1917," or whether "it was the social and cultural differences between [workers and the intelligentsia]" that "led to...social and psychological tension that persisted down to 1917."


After the Revolution of 1917, the focus of the newly-established country of the USSR became the socialist system of ownership and socialist economy. Supporters of the socialist regime claimed that their political system "[made] the exploitation of labour in any form impossible" because the workers "[did] not

31. See Olga Rymkevitch, The Codification of Russian Labour Law: Issues and Perspectives, in CHANGING INDUSTRIAL RELATIONS & MODERNISATION OF LABOUR LAW 337 (Roger Blanpain & Manfred Weiss eds., 2003). Scholars often disagree over the main reasons for these differences. See id. Some experts argue that the "shock therapy in Russia has not entailed the same sweeping reforms as it has in Poland, Hungary, the Czech Republic, and Slovakia." Id. It appears that the new Labor Code has been partly influenced by the labor relations of other countries in Western Europe. Id. at 351 (footnote omitted). In order to better understand the special features of the Russian Labor Code, it is important to obtain an in-depth understanding of the social and economic characteristics of Russia. Id.


34. Id. (quoting WORKERS AND INTELLIGENTSIA IN LATE IMPERIAL RUSSIA: REALITIES, REPRESENTATIONS, REFLECTIONS, supra note 32, at 186). 1917 is the year when the Russian Socialist Revolution lead by Vladimir Lenin took place.

35. See R. LIVSHITZ & V. NIKITINSKY, AN OUTLINE OF SOVIET LABOUR LAW 34 (1977). "[S]ocialist economic system and socialist ownership of the means of production, firmly established as a result of liquidation of the capitalist system, the abolition of private property in the means of production, and the ending of exploitation of man by man." Id. (citing Konstitutsiia SSSR (1977) [Konst. SSSR] [USSR Constitution]).

36. Id.
work for an owner-exploiter, but for themselves, [and] all Soviet people."\textsuperscript{37} They further claimed that there was "no class struggle" in the USSR\textsuperscript{38} and there was no unemployment there, nor could there ever be.\textsuperscript{39}

The Soviet labor and employment system was heavily regulated during that time and "reflected the centralism of the socialist structure and command economy."\textsuperscript{40} The Constitution of the USSR outlined the specifics of permissible labor contracts and worker rights.\textsuperscript{41} The legislation introduced a guaranteed right to work for all adult citizens of the USSR and it also imposed a duty to work.\textsuperscript{42} If a particular manager or supervisor, for example, attempted to enter into a labor contract with an employee that resulted in a "worse position for the worker"\textsuperscript{43} than provided for in the legislation, in terms of salary, number of vacation days or something else along those lines, that contract would be considered unenforceable or invalid.\textsuperscript{44} In fact, it was a crime for an "adult able-bodied citizen not to work."\textsuperscript{45} Understandably, labor and employment law in the former Soviet Union was a reflection of its ideological views.\textsuperscript{46}

On July 15, 1970, the Soviet State adopted its first national Labor Code,\textsuperscript{47} a major piece of legislation regulating labor and employment relations in the former USSR.\textsuperscript{48} This newly-created code consolidated all prior labor-related legislation\textsuperscript{49} and became the governing law regulating the labor market and employer-employee relations. In fact, according to scholars, the "nature of labor contracts under this code was the fundamental

\textsuperscript{37.} Id.
\textsuperscript{38.} Id.
\textsuperscript{39.} Id. at 37.
\textsuperscript{40.} Bliss, supra note 1, at 264, 269.
\textsuperscript{41.} See Livshitz & Nikitinsky, supra note 35, at 42.
\textsuperscript{42.} Bliss, supra note 1, at 268.
\textsuperscript{43.} Livshitz & Nikitinsky, supra note 35, at 43.
\textsuperscript{44.} Id.
\textsuperscript{45.} Bliss, supra note 1, at 268. (quoting SOVIET CRIMINAL LAW AND PROCEDURE 80 (Harold J. Berman & James W. Spindler trans., 1972)).
\textsuperscript{47.} Id. The Soviet Labor Code was specifically named "The Fundamentals of Labour Legislation of the USSR and the Union Republics" and it was "the first national code of labour legislation in the history of the USSR." Id. (citation omitted).
\textsuperscript{48.} Kirichenko & Kudiukin, supra note 26, at 74.
\textsuperscript{49.} See generally Holmes, supra note 46.
parameter influencing labor market behavior.” Overall, the Labor Code outlined numerous fundamental rights to be exercised by workers, as well as prohibitions and restrictions, which the government placed on the market. The state ensured the workers full employment, job security, health care, housing, social security, and education. Although citizens had the right to work, they did not have the individual right to choose work, choose union representation, or negotiate their own employment contracts. Moreover, refusing work was considered a criminal act against other workers. It is of interest, however, that the right to strike was not included in the Labor Code, and workers were “effectively denied” such fundamental rights as “worker rights to organize, bargain, and strike . . . .” The State was very much in control of the labor market and prohibited private entrepreneurship. Moreover, Russian criminal law made entrepreneurial activity punishable by incarceration or exile for up to five years.

i. Unions and their Role in the Soviet Society

The Labor Code established a number of regulations dealing with trade unions (“unions”) and collective bargaining. Most important, it established and outlined the role and rights of the All-Union Central Council of Trade Unions (“AUCCTU”), the State’s official union, which was established in order to unify all existing unions. Under the Soviet system, the unions per-

50. Kirichenko & Kudiukin, supra note 26, at 74. For example, the Labor Code specifically regulated the duration of fixed-term contracts. Id.
51. See Holmes, supra note 46, at 353-54 (citations omitted).
52. Id. at 354.
53. Id. at 352.
54. Id. at 352-53 (citation omitted).
55. See Bliss, supra note 1, at 275.
56. See id.
57. The Soviet scholars claimed that the “Soviet state has never in its whole history adopted a law that restricts union fights in any way.” Livshitz & Nikitinsky, supra note 35, at 122.
58. The enterprise’s trade union committee frequently concluded and signed collective bargaining agreements with management. Bliss, supra note 1, at 280. However, they did so on the labor collective’s behalf and only after the collective had accepted the agreement. Id. Collective bargaining agreements were authorized by the Labor Code and they covered all workers within the labor collective. Id. at 281. Such agreements were limited to social benefits because “terms and conditions of employment were established by State planning.” Holmes, supra note 46, at 352 (citation omitted).
59. Holmes, supra note 46, at 349.
formed many tasks that "would be functions of management under market economies." Examples of such tasks included distribution of social goods and various benefits, including housing, food, clothing, and cars. More specifically, the unions operated as organizational appendages of state control in partnership with management. For example, the Code allowed the unions to initiate relevant legislation and to work with various high authorities and enterprises on fixing wages for workers and creating and improving working conditions.

It was the unions' responsibility to protect workers' safety by ensuring that working conditions were in compliance with safety regulations. The management of a particular enterprise had to provide its union, free of charge, with premises for holding staff meetings and all the necessary equipment, such as a phone line, heating and cleaning. Moreover, all property that was owned or rented by the enterprise was at the union's disposal free of charge, along with its maintenance and upkeep, and it was financed by the enterprise. In addition, enterprises were required to allocate funds to unions at a rate of fifteen percent of their wages for "mass cultural work and sport activities."

In order to promote employees to executive positions, management had to receive the union's approval. Furthermore, managers were obligated to terminate an executive employee at the request of the trade union if the union asserted that he had violated labor legislation in some way, had not fulfilled his obligation.

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60. Id. at 350. Most working citizens automatically became members of trade unions. Bliss, supra note 1, at 280.


62. See id. at 350-51. "In addition to management responsibilities, union leadership was co-opted by management." Id.

63. Id. (citations omitted). Trade unions appointed committees, which operated at the actual work places and represented them at the enterprise level. Bliss, supra note 1, at 279. The law enabled the committees to take on various responsibilities affiliated with the administration of labor decisions. Id. They represented the interests of workers by managing issues of grievances with management, distribution of employee benefits et cetera. Id. Overall, they played a key role in the day-to-day operations of the labor infrastructure. Id.

64. Holmes, supra note 46, at 351. In addition, the unions administered social insurance for the workers by managing various social programs that included cultural, tourist, and educational facilities. Id.

65. Livshitz & Nikitinsky, supra note 35, at 122.

66. Id.

67. Id.

68. Id. at 126.
gations in his collective bargaining agreement or had "resorted to bureaucratic methods."\textsuperscript{69} This obligation was legally binding on the management and they were not in a position to disregard it.\textsuperscript{70} However, there was no judicial remedy for challenging such decision. The only permissible appeal was to a higher trade union body, which would be able to issue a final determination.\textsuperscript{71}

ii. Role of the Labor Collectives and Brigades

Distinguishable from the trade unions, labor collectives\textsuperscript{72} were elected by members of each enterprise.\textsuperscript{73} They consisted of management and executives that met bi-annually, while their specially-designated councils met more frequently.\textsuperscript{74} The role of labor collectives was very broad; they took part in discussions and resolutions of various state and social affairs.\textsuperscript{75} Creation of labor collectives basically was another expression of the need to allow workers to participate in enterprise management.\textsuperscript{76}

In order to organize and structure production within a particular enterprise, the brigades system was implemented.\textsuperscript{77} The brigades were considered to be the "'lowest production entity in the enterprise,' which 'contract[ed] with management to perform production planning tasks,' thereby replacing a system of issuing tasks to individual workers."\textsuperscript{78} The upside, however, was that the brigades represented "small organizational units within an immense labor bureaucracy" in the former Soviet Union.\textsuperscript{79}

iii. Permissible Contracts Under the Labor Code

The nature of permissible labor contracts established under the Labor Code was the "fundamental parameter influencing la-

\begin{itemize}
  \item \textsuperscript{69} Id. at 126-27.
  \item \textsuperscript{70} Id. at 127.
  \item \textsuperscript{71} Id.
  \item \textsuperscript{72} "Trudovoi kollektiv" is the Russian term; "labor collective" is its translation. Bliss, supra note 1, at 279 n.121.
  \item \textsuperscript{73} Id. at 280.
  \item \textsuperscript{74} Id.
  \item \textsuperscript{75} Id.
  \item \textsuperscript{76} Id.
  \item \textsuperscript{77} Id. at 282.
  \item \textsuperscript{78} Id. (quoting W.E. Butler, Soviet Law 231 (2d ed. 1988)).
  \item \textsuperscript{79} Id.
\end{itemize}
bor market behavior. The Code was very strict and specific on the issuance of fixed-term contracts to make sure employers were not avoiding having to provide employees with specific benefits that they were entitled to under an indefinite-term contract. Accordingly, the Code initially limited a fixed-term contract to a maximum of three years (later increased to five) and stipulated that extending the terms would automatically transition them into indefinite contracts. Although theoretically a worker had the freedom to negotiate his own contract, the reality limited him to negotiating his “sphere of activity”—i.e., the actual functions he was going to perform. If a worker decided to waive any of the rights provided to him by the labor legislation, that contract became invalid.

Labor disputes were addressed by either a special labor dispute or trade union committee. The other alternative reviewers were either town or district courts. The labor dispute committees, however, were the required first step to examine labor disputes. Such disputes had to be resolved on a group/collective basis and dealt with a broad range of employment-type issues, while individuals had no such authority.

High administrative barriers protected workers from losing their jobs. Management-initiated layoff decisions required the approval of trade unions. Moreover, existing labor regulations “did not envision layoffs due to fluctuations in market conditions or cyclical factors.” It was also incredibly difficult to fire a worker for poor performance terminating a worker deemed

80. Kirichenko & Kudiukin, supra note 26, at 74.
81. Id. at 75.
82. Id. at 74-75.
83. Livshitz & Nikitinsky, supra note 35, at 41.
84. Id. at 43.
85.Labor dispute committees (“LDC”) were composed of “an equal number of permanent members of the local union committee and of the management.” Bliss, supra note 1, at 283 (quoting V. Glazyrin et al., Soviet Employee’s Rights in Law 169 (James Riordan trans., 1978)).
86. Id.
87. Id.
88. Id.
89. Id.
90. See Kirichenko & Kudiukin, supra note 26, at 76.
91. Id.
92. Id.
93. Id.
incompetent to do the job required both following stringent procedures and offering the employee another position.\textsuperscript{94}

Management had no power to terminate a worker, and it could only recommend termination.\textsuperscript{95} The final decision was to be reached by the trade union committee and had to be in writing and established by majority vote.\textsuperscript{96} If the trade union disapproved dismissal of a worker, however, its decision was final and irreversible, and not subject to judicial review or appeal.\textsuperscript{97} The procedural structure obviously favored employees, because, unlike the management, a terminated worker could appeal the decision to court.\textsuperscript{98} Generally, grounds for termination under the Code included the following: shutting down of the enterprise or staff reduction, unfitness for the position, constant failure to carry out work-related duties, absenteeism from work, and overextended absence due to temporary incapacity.\textsuperscript{99} When a worker was dismissed involuntarily, he was entitled to severance pay for two weeks.\textsuperscript{100} In contrast, a worker was permitted to resign his position subject to providing two week's notice.\textsuperscript{101} In an instance when the labor contract was fixed-term, an employee could resign only for valid reasons, such as sickness, disability, violation of labor legislation, or other.\textsuperscript{102} Only the investigating body, and not the administration, had a right to suspend an employee.\textsuperscript{103}

Employers were allowed to include a probationary period in their agreements. This allowed them to hire workers with less risk and offered an employee the opportunity to prove himself in order to receive an official offer of employment.\textsuperscript{104}
to “another job in another enterprise” was permissible only if the employee gave his consent.105

iv. Protection of Women, Graduates, and Minors

Special protection was extended to women and minors under the Code. Specifically, it was forbidden to dismiss “pregnant women, nursing mothers or mothers with children under one year of age.”106 The only exception to this restriction was a complete shutdown of the institution or enterprise.107 Minors also enjoyed special privileges. Generally, one had to be sixteen years old to work, although it was possible to start working at fifteen, provided there was consent of the union.108 Using a probation period for minors was not allowed.109 Dismissal of a minor was allowed only in exceptional cases, provided other work was found for them.110

Unlike other workers, graduates did not have the same freedom to choose the type of job they would perform.111 Upon graduation, they were directed to a place of employment where they were required to work for at least three years.112 The administration could not refuse to hire a graduate and did not have a right to terminate a graduate during that initial three-year term, unless the special consent of the applicable ministry was provided.113 All places of employment had required quotas of available vacancies for employment and training of graduates and young people less than eighteen years of age.114

2. Post-Soviet Transition

Up until February 1, 2002, the main legal framework regulating labor and employment structure in Russia was the Soviet

105. Id. at 47. “[A]nother job in the same enterprise” was interpreted broadly. Id.
106. Id. at 60.
107. Id.
108. Id. at 42.
109. Id. at 47.
110. Id. at 60. Exceptions may include shutting down of the enterprise, unfitness for the job, reduction of labor force, and other. Id.
111. Id. at 166-67.
112. Id. at 167.
113. Id.
114. Id. at 46.
Labor Code of 1971. Despite all the changes and reforms that took place during the *perestroika* (restructuring) era, the old Labor Code, which was based on state ownership, continued to dominate and regulate the rights and obligations of workers. Accordingly, it is understandable that the established legal traditions of the post-communist Russia and former Soviet Union are considered to be "sufficiently intertwined" and "no sharp distinction is necessary with regard to legal consciousness."

However, a number of amendments and changes were made to the 1971 Labor Code in order to guarantee the rights of employees during the transition period. The Code was renamed to the Code of Laws on Labor of the Russian Federation. Overall, the amendments attempted to: expand employees' rights; add new grounds for termination of workers;

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116. After Mikhail Gorbachev was selected as party leader in 1985, he focused on conducting a number of major structural economic reforms. David Mandel, *Labour after Communism* 11 (2004). Eventually, he decided to take on an even bigger approach by announcing the beginning of *perestroika* (restructuring). *Id.* "The basic idea was to replace vertical, centralized management of the economy with horizontal, decentralized coordination through the market." *Id.* The enterprises were to become more autonomous, while still being state-owned, which "would free up the energy of the central government for strategic planning." *Id.* This would be accomplished through the "manipulation of macro-economic levels rather than by detailed central planning and direct intervention into the activity of enterprises." *Id.* Some authors, however, argue that the initial steps "toward a Russian market economy were taken by the USSR in the five years immediately preceding the formal dissolution of the USSR on December 31, 1991." Bruce Bean, *Doing Business in the New Russia: Rebirth of the Russian Nation*, 35 *Int'l Law.* 961, 961 (2001).


118. *Id.*


120. Bliss, *supra* note 1, at 298. The Code was formally called the Code of Laws on Labor of the Russian Republic. *Id.*

121. Among newly provided protection for workers are the right to choose type of work; free assistance from the government employment service in arranging work; free training for a new job; raising of employment qualifications; compensation for expenses associated with job transfers; and "legal protections from groundless terminations." *Id.* at 302.

122. Article 40, in providing new requirements on the termination of workers, "represents a major step in recognizing the realities of the change to a market economy." *Id.* Acknowledging that workers may be terminated in connection with reductions in the labor force is a huge step for the country where firing a worker was a
clarify the role of trade unions;\textsuperscript{123} provide enforcement mechanisms for collective agreements;\textsuperscript{124} and provide specific regulations that define the parameters of labor contracts.\textsuperscript{125} In addition, it changed the terms of leave for women and other benefits.\textsuperscript{126} All of these changes reflected the legislature’s attempt to recognize the development of a market economy and adjust the existing law accordingly. Another critical step in the labor movement towards a market economy was the establishment of BUTEC People’s Concern. In 1990, the Soviet Council of Ministers established BUTEC, this allowed its members to purchase and run enterprises and conduct their own market relations.\textsuperscript{127} It is argued that legislation regulating labor had been completely ignored by economic operators and eventually led to the collapse of the central role occupied by the State resulting in enormous wage reduction as well as mass unemployment.\textsuperscript{128}

The 1990s are commonly characterized as years of economic crisis and despair in Russia.\textsuperscript{129} Many employees had lost

\textsuperscript{123} "relatively rare practice." \textit{Id.} at 302-03. In regards to the revised employment provisions, one author, however, argues that "in effect the new list is essentially the old list, with a handful of new reasons included . . . ." Rymkevitch, \textit{supra} note 31, at 350.

\textsuperscript{124} The description of trade unions was reduced from dozens of paragraphs to one that could possibly be explained by the legislature’s intent to “weaken the trade union committees’ roles by not specifying their duties in the code.” Bliss, \textit{supra} note 1, at 299. In addition, the “trade union committee” was renamed to “trade union organ.” \textit{Id.} This change possibly envisions a “more flexible labor system with a wider variety of representative trade union bodies.” \textit{Id.}

\textsuperscript{125} Overall, the 1992 amendment to Article 244 moves the enforcement mechanisms away from centralized control over labor. \textit{Id.} at 311. Specifically, it removes any reference to Soviets of People’s Deputies and strikes specific duties of “ministries, state committees and departments” in exercising control over complying with proper labor legislation. \textit{Id.}

\textsuperscript{126} The new amendment increased the permissible length of a fixed-term employment contract from three to five years and prohibited short-term contracts unless specific provisions were met. Kirichenko & Kudiukin, \textit{supra} note 26, at 74-75. Another example of a modification is the new requirement of putting all labor/employment contracts in writing. \textit{Id.}

\textsuperscript{127} \textit{Id.} at 77.

\textsuperscript{128} Bliss, \textit{supra} note 1, at 287-88.

\textsuperscript{129} Rymkevitch, \textit{supra} note 31, at 336 (citing Memorandum from Mironov, \textit{Analysis of Legal Regulation of Labour in the Russian Federation}, International Conference on Social and Labour Issues: Overcoming Adverse Consequences of the Transition Period in the Russian Federation, Moscow, (Oct. 6, 1999), available at http://www.hro.org/ngo/duma/35/index.htm). “This has led to the development of a hidden and parallel labour market, based on a labour relations philosophy that was contra legem when compared to the traditional Soviet system that was characterized by full employment and a lack of illegal work.” Rymkevitch, \textit{supra} note 31, at 336.

\textsuperscript{129} See Holmes, \textit{supra} note 46, at 341-42.
their jobs during mass discharges or were not getting paid for extended periods of time while retirees were not receiving their pensions. One author's view is that the political lesson to be learned from the Russian experience is, when the state attempts to be the people's benefactor and provide everyone with instant welfare, and does so by substituting a system of state-owned property and a planned economy for a system based on private property ownership and a market economy, the result is misery and tyranny.

3. The 2002 Version of the Labor Code (Key Rights)

The new Labor Code of the Russian Federation became effective in February 2002. Although it "retains many of the protective and regulatory features of its Soviet predecessor," it arguably differs radically from the old version in its definition of the fundamental principles of labor legislation. Upon enactment, the new Labor Code was viewed as a "welcome and significant improvement of the investment climate in Russia." The initial hope was that the new Code would strike a balance between the interests of all kinds of management and workers. In comparison to the old Labor Code, the new one is a "compromise between the interests of businesses and the interests of employees" and it represents a "more modern and detailed piece of legislation." At a first glance, the new Code "removes the hyper-protection employment system" of the past that was viewed as a "total denial of market economy principles," thus taking a more liberal approach to employer-employee relations. Some scholars, however, argue that a further examination of the Code reveals that the new legislation addresses "deep and radical

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130. See id.
133. Ashwin & Clarke, supra note 115, at 112.
135. Id.
137. Id. at 839.
changes that began prior to the collapse of the Soviet Union."\textsuperscript{139} In contrast, others claim that the new Code is ineffective as it failed to adapt to the new Russian economy in transition.\textsuperscript{140} Moreover, some experts believe that the Code is inflexible; it failed to resolve old problems in the law; and it turned out to be "unjustifiably compromised."\textsuperscript{141}

The new Labor Code is described as a "shift towards increased autonomy for trade unions and employers associations."\textsuperscript{142} In fact, some scholars contend that this legislation actually brought labor law into the overall framework of civil law, while others maintain this argument is unpersuasive because they believe the employment agreement will always remain within its own set of rules.\textsuperscript{145} Overall, the new Labor Code provided a number of substantive changes. Among major new changes are the following: first, the Code offered new grounds that allow employers to terminate their employees thereby giving employers rights over the dismissal of workers.\textsuperscript{144} Second, the new Labor Code set the minimum wage as the "subsistence minimum for an able-bodied adult."\textsuperscript{145} Third, the Labor Code introduced a number of significant improvements in workers' rights when it comes to the payment of wages.\textsuperscript{146} Among other examples of new regulations, the new Labor Code supersedes any previously established employment agreements.\textsuperscript{147} Specifically, it provides minimum guarantees to employees that they are entitled to under any circumstances.\textsuperscript{148} Employment agreements must specify all duties and obligations under the contract.\textsuperscript{149} It is required that the duration of employment agreements be indefinite unless it can be demonstrated that the contract falls

\begin{flushleft}
\textsuperscript{139} Id.  \\
\textsuperscript{140} Kirichenko & Kudiukin, supra note 26, at 81.  \\
\textsuperscript{141} Id.  \\
\textsuperscript{142} Rymkevitch, supra note 31, at 338.  \\
\textsuperscript{143} See id. at 339.  \\
\textsuperscript{144} Bean & Shpak, supra note 134, at 853-54. But see Kirichenko & Kudiukin, supra note 26, at 82 ("No significant positive changes (in comparison with the 1971 Labor Code) were made in the regulation of layoffs at management's initiative. As before, possibilities for firing employees were limited to a fixed list of causes.").  \\
\textsuperscript{145} ASHWING & CLARKE, supra note 115, at 113.  \\
\textsuperscript{146} Id. at 112-13.  \\
\textsuperscript{147} BAKER & MCKENZIE, DOING BUSINESS IN RUSSIA 55 (2006).  \\
\textsuperscript{148} Id.  \\
\textsuperscript{149} Id at 55-60 (describing various minimum guarantees to employees).  \\
\end{flushleft}
within one of specifically outlined exceptions.\textsuperscript{150}

As to its structure, the Labor Code consists of general provisions of labor relations,\textsuperscript{151} collective bargaining,\textsuperscript{152} employment contracts,\textsuperscript{153} work and rest time,\textsuperscript{154} salary,\textsuperscript{155} guaranteed rights and compensation,\textsuperscript{156} discipline and training,\textsuperscript{157} work safety,\textsuperscript{158} and sanctions for damage to property.\textsuperscript{159}

Although it has been acknowledged that the New Code contains a number of mechanisms "intended to make labour relations and industrial relations in Russia much more flexible,"\textsuperscript{160} there have been many challenges in that regard.\textsuperscript{161} The most obvious obstacles, which are difficult to regulate, are substantial law evasion rates (that actually worsened over time because of the weak sanctions imposed on lawbreakers) and the weak position of trade unions.\textsuperscript{162}

\section*{II. RUSSIAN LEGAL CULTURE \& ENFORCEMENT OF ITS LABOR LAW}

\subsection*{A. Is the Existing Labor Law Effective and Properly Enforced?}

The first issue to analyze is whether the current labor law is effective in theory and suits the overall needs of the Russian economy and society. Scholars disagree on whether the existing body of Russian labor law is efficient and progressive. According to Oleg Shein, a member of the Russian State Duma, the new Labor Code is "progressive" because it offered protection to the workers and emphasized the role of trade unions.\textsuperscript{163} The new code requirement that employers "include workers in economic management" is often viewed as a very positive development.\textsuperscript{164}

\begin{footnotesize}
\begin{enumerate}
\item[150.] Id. at 55.
\item[151.] Trudovoi Kodeks [TK] [Labor Code] art.1 (Russ.).
\item[152.] Id. art. 24.
\item[153.] Id. art. 56.
\item[154.] Id. arts. 91, 106.
\item[155.] Id. art. 129.
\item[156.] Id. art. 164.
\item[157.] Id. art. 189.
\item[158.] Id. art. 209.
\item[159.] Id. art. 232.
\item[160.] Rymkevitch, supra note 31, at 351 (emphasis added).
\item[161.] Id.
\item[162.] Id.
\item[163.] Stephen James Kerr, Where Mike Harris Got His Labor Code: Russian Workers Taste IMF's Poison Pill, 35 Canadian Dimension 14, 14 (2001).
\item[164.] Id.
\end{enumerate}
\end{footnotesize}
Moreover, by "using the courts, [the workers] have won victories against their employers because the law is the law."165 On the other hand, Svetlana Bailbodorova, an opponent of the new Labor Code, claims that the existing employer-employee relations are illegal and violate the law leading this new labor legislation to result in "criminal exploitation of Russian workers."166

In terms of its written provisions, the Labor Code has been criticized for purely outlining permissible boundaries that are appropriate to an employer and employee in a labor contract but fail to establish each participant's specific commitments or obligations.167 On a bigger scale, many scholars are unwilling to accept the fact that the new labor code was an amendment of a previous labor legislation that was initially adapted during communism.168 Even some Russian scholars believe that the "preservation of numerous elements from an outdated labor law at a time of real change in labor relations impedes the development of a market economy in Russia and results in numerous negative consequences."169

Historically, legal developments do happen over time and it is of no surprise that experts are skeptical and critical of adjusting the old legislation to a brand new stage of a country's economical development. It is well-known that Russia has gone through political and social changes of implausible proportion in the last twenty years. Moreover, those changes are still in progress today and the law is arguably unable to keep up with these developments. As such, every attempt to adjust and amend the law should be viewed as a step in the right direction. The big question, however, remains whether the new amended legislation is being properly enforced. If the law is only present in the books and not widely followed, it is obviously ineffective, thereby making any specific changes or provisions completely unimportant. The big issue then becomes whether the existing enforce-

165. Id.
166. Id. Svetlana Bailbodorova is a member of Zashita Truda (Defense of Labor), a joint organization combining unions across Russia. Id.
168. See, e.g., Rymkевич, supra note 31, at 336 (stating that the new legislation appears to mostly focus on "deep and radical changes that began prior to the collapse of the Soviet Union.").
ment mechanisms provide for proper implementation procedures of the new labor law in Russia. Even if such mechanisms are effective in theory, the society has to have an appreciation for the importance of the law and be prepared to enforce and follow its specific regulations. So the question becomes whether Russian society is prepared to do so. To answer this question, it is important to analyze the specific rights stated in the Labor Code and whether they are being enforced.

For example, the initial version of the Labor Code stated six permissible reasons to discharge a worker upon a decision of the management.\(^\text{170}\) In 1991, that number was expanded to nine and included both disciplinary and non-disciplinary related reasons.\(^\text{171}\) Dismissed workers had a right to challenge such actions in court.\(^\text{172}\) If a worker prevailed, the available remedy was reinstatement.\(^\text{173}\) Examination of the Russian labor law in the 1980s demonstrates that the laws dealing with dismissals and transfers were "rigorously implemented."\(^\text{174}\) In fact, an initial inspection of available court documents suggests that the courts took the labor legislation seriously and did their best to guarantee and enforce workers' rights.\(^\text{175}\) However, this was far from reality. For example, in 1991, a revision was added to the legislation that required the "preliminary consent of the profkom."\(^\text{176}\) In any in-


\(^{171}\) Id. The recent version of the Labor Code states fourteen reasons that make it legitimate to fire a worker. See Trudovoi Kodeks [TK] [Labor Code] art. 81 (Russ.). Those reasons include dissolution of the company, staff reduction, employee inability to perform her task, poor qualifications for performing job tasks, change of company ownership, failure to fulfill employee obligations on numerous occasions resulting in disciplinary sanctions, and others.

\(^{172}\) Hendley, supra note 170, at 53.

\(^{173}\) Id.

\(^{174}\) Id. at 75.

\(^{175}\) Id.

\(^{176}\) "Profkom" means professional committee. In fact, like many other provisions in Russian law, the requirement of obtaining consent from profkom happened to have "little practical effect." Id. at 91. For example, Hendley's review of a seven year record of trial court proceedings in Russia revealed only two cases where an employee was reinstated due to a failure to get consent from profkom. See id. In fact, the legal counsel for one of the enterprises told Hendley that they "long ago became accustomed to getting profkom consent before drafting the official dismissal order." Id. at 92. This obviously takes away the initial purpose for creating profkom which is supposed to be a protector of workers' rights. See id. at 96. Instead, all it was doing was nothing more than "rubber-stamp management decisions." Id. at 98. Even a trial judge revealed in private
stance of worker discharge at the management's initiative. A closer look at the status of enforcement in the 1980s reveals that the "legal rights of workers that on paper seemed so well protected become largely meaningless in practice." Management was typically able to manipulate the law, in terms of both substance and procedure while the trade unions were "thoroughly co-opted by management." Accordingly, the management's apparent burden of proof was nowhere near what the published materials suggested and the provisions that were supposed to protect the rights of workers in that regard actually failed to do so. In fact, research revealed that in certain instances, workers and even their superiors were completely unfamiliar with existing law or policies.

Overall, legal scholars commonly agree that labor law did not fully govern the structure of employment in Russia in the past. In fact, the consensus is that the "basic failure was one of effectiveness." Although a number of laws were adopted, the "most effective ones were ignored." Thus, the next logical question is whether there have been any changes in that regard and what the status of enforcement has been since that time.

1. Formal v. Informal Labor in Russia

In Russia, there are two widespread employment practices: official/formal and unofficial/informal employment. That means the arrangement can be based on either a written contract or an oral agreement that is not necessarily in compli-

conversation that he believed workers were "trouble-makers" and should be getting what they deserved. Id. at 102.

177. Id. at 54.
178. Id. at 77.
179. Id.
180. See id. In fact, Hendley's research of layoff cases reveals a "disturbing tendency on the part of the courts to accept the word of management with no questions asked." Id. at 103. However, "relying on the number of cases filed to prove the presence or absence of a given phenomenon is problematic in the Soviet context." Id. at 108.

181. See, e.g., id. at 77 (the author's interviews with various heads of Russian factories in the 1990s revealed that none of them were aware of the current law and policy that was supposed to affect the operation of their enterprises).
182. See id. at 109-10.
183. AHDIEH, supra note 117, at 50.
184. Id.
185. Barsukova, supra note 167, at 65.
186. The "verbal kind of hiring seems to be a sphere of agreements, the compli-
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ance with the law. In fact, more and more workers are getting involved in such informal labor arrangements. This ongoing “withdrawal of the written law from labor relations has reduced both social benefits as well as legal protection for workers.”

For example, employers that do not have a written contract with their employees are able to avoid payment of taxes or penalties for late payment of salaries. In addition, employers can force workers to retire in order to avoid paying severance. Overall, such arrangements are characterized by “developed and highly-specific practices” that usually put employees at a disadvantage.

Theoretically, enforcement of labor rights and procedures stated in the new Russian labor legislation should take place through individual dispute procedures at the workplace and can also be supplemented by judicial enforcement in court. Labor unions are also specifically given an important role in protecting the rights of workers. In fact, the Labor Code specifically states that employees’ labor rights should be protected by
the State, trade unions, and employees themselves. Moreover, the government is supposed to provide "supervision and control over the compliance with the labor protection requirements" in order to "prevent and eliminate" potential breaches.

Although in theory the labor legislation framework provides what appear to be appropriate enforcement mechanisms, such provisions are scattered all over the Labor Code and are vague and unorganized. Despite these potentially available remedies, today's reality in the Russian Federation is that "in practice the means of enforcement legislation are very limited, with only a small proportion of legal violations being challenged by primary trade union organizations or uncovered by individual labor disputes." In fact, substantial violations of the labor legislation were uncovered by researchers and, despite the undisputed significance of the new Russian Labor Code, the enterprises do not adhere to its provisions.

Therefore, the structured formal labor legislation still does not necessarily govern everyday aspects of employment in the Russian Federation. No matter how good the law is, it is obvi-

195. "Trade unions have the right to supervise over the observance of the Labor Code and other legal acts, containing labor regulations by employers and their representatives." Id. art. 370.

196. Id. art. 352. In addition, the Labor Code states that, "State supervision and control over the observance of the Labor Code and other legal acts, containing labor regulations in all organizations on the territory of the Russian Federation is implemented by the bodies of the Federal Labor Inspection." Id. art. 353. The Federal Labor Inspection is specially created in order to supervise and control proper observance of the regulations set force in the Labor Code. Id. art. 356. Among others, its functions theoretically include receiving employee claims and complaints that refer to alleged violations of their labor rights. Id. art. 356. Furthermore, the Labor Code specifically authorizes creation of labor protection services or insuring the presence of a labor protection expert in organizations employing 100 or more individuals. Id. art. 217.

197. Id. art. 220. It is of interest that some additional protection and enforcement options are offered to employees for various causes throughout the Labor Code. For example, in instances where an employer damages her employee's property, that employee is to submit a request for damage recovery to the employer. Id. art. 235. If the employee disagrees with the employer's decision on this issue or he did not receive relief, he then "has the right to take legal actions." Id. art. 235. In an instance of an employee causing potential damage to the employer, the employer will evaluate the damage and provide his employee with all relevant documents applicable to the situation. Id. art. 247. The employee has the right to appeal them as pursuant to the procedure specified in the Labor Code. Id. art. 247.

198. ASHWIN & CLARKE, supra note 115, at 193-94.

199. Id. at 225.
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ously not useful if it is not being followed by the majority of citizens and enterprises. Accordingly, the most important question becomes why the law is so easily avoided and what, if anything, can be done in order to ensure proper enforcement.

2. Russian Legal Culture and its Lack of Respect for the Law

We were never without the law, though often we chose to ignore it.

Mikhail Gorbachev, interview of 17 August 1993.200

It is interesting to note that "under the legal theory, a country's approach to regulation is shaped by its legal tradition."201 Unfortunately, "Russians' weak legal consciousness has long roots in their history, as law has never been admired in Russia, its role in society considered negligible, if not detrimental."202 In fact, the law was simply "an obstacle to be outmaneuvered for survival's sake."203 It is common knowledge that the Russian people "do not like to obey all sorts of rules, laws, instructions or directives—any kind of previously established regimentation of behavior."204 As a result, the overall mentality of the Russian citizens is that the law does not apply to them.205 A closer look at many enterprises in the Russian Federation demonstrates the presence of the above-described mentality on an everyday basis.206 Just like in the past, both managers and workers violated numerous procedures in order to secure their earnings.207 The official data reveals that labor legislation violations by employers amounted to approximately two million per year at the end of the 1990s.208

202. AHDIEH, supra note 117, at 96-97.
203. Id. at 98 n.14.
204. Id. at 199 n.6.
205. Id. at 102-03. It is of interest that the Russian sense of fairness and justice involves various elements that are "altogether outside a legal framework, including morality, religion, and social goals." Vladimir Grib, The Legal Profession and Civil Society in Russia, in RUSSIA'S FATE THROUGH RUSSIAN EYES 145, 151 (Heyward Isham ed., 2001).
206. For example, the management at a Moscow Ball-Bearing factory was discovered to illegally dock worker wages when workers took sick days or leaves of absence that were permissible under the law. MANDEL, supra note 116, at 45.
208. ASHWIN & CLARKE, supra note 115, at 184. In reality, the actual number of violations probably exceeds the stated amount because numerous violations were never
It is not surprising that this type of mentality and a lack of appreciation for the importance of the law in society do not change overnight. As such, the well-established lack of regard for the law that was historically common in Russia has not undergone a major change. Along those same lines, one may wonder why the Russian people do not make better use of their judicial system in an effort to enforce their labor rights. As discussed above, the enforcement mechanisms do exist and are a part of the law itself. As such, it may be confusing to a Western reader why Russian citizens would not choose to take advantage of available provisions and enforce the labor rights they are legally entitled to. The answer similarly lies in the Russian society's historic disbelief in the power of law and the judicial system. Basically, the answer takes us back to the "weakness of legal consciousness in Russia" and its generally "narrow legal culture." As a result, while the Russian legal system exists, it has been typically viewed as ineffective and "Russian workers are [still] confronted by a chaotic and poorly regulated labor market, in which securing a living wage is a major feat."

However, a number of positive developments are taking place in Russia and some scholars believe that the "legal basis for a favorable business climate already exists."

reported and unaccounted for. "As in the Soviet period, the systematic violation of workers' rights may only come to light in the event of an accident or if workers protest, sending letters and petitions to higher authorities or holding demonstrations, pickets or strikes." Id. at 185. It is also interesting to note that according to the Corruption Perception of Transparency International, Russia is the tenth most corrupt country out of eighty-five. Anders Aslund, Law in Russia, 8 E. EURO. CONSTITUTIONAL REV. 4, 96-101 (1999), available at http://www.carnegieendowment.org/publications/index.cfm?fa=print&id=413.

209. AHDIEH, supra note 117, at 95. An interesting example that supports the theory of Russia's historic lack of respect for the law is its landmark writer and cultural legend Leo Tolstoy's open distrust or even hatred for "jury trials as well as for legal title to property, which he believed belonged only to God." Id.

210. See generally Aslund, supra note 208. Interestingly, "[m]any Russian lawyers feel that we have to create a normal sense of justice so that lawyers themselves do not doubt the importance of the law." Grib, supra note 205, at 151.

211. Svetlana Yaroshenko et al., Gender Differences in Employment Behavior in Russia's New Labour Market, in ADAPTING TO RUSSIA'S NEW LABOUR CODE 134, 134 (Sarah Ashwin ed., 2006). Despite the current status of the law and its enforcement, "[i]n the eyes of many, the law is not among the critical concerns facing Russia at this juncture in its history." AHDIEH, supra note 117, at 1. This is obviously a flawed perspective because without legal stability "no political or economic reform will survive, let alone succeed." Id. at 2.

212. Bean, supra note 116, at 996.
lack of respect for the law is arguably changing as the importance of the courts has "grown rapidly since Soviet times, and their judgments are often taken as precedent, albeit unofficially, since it remains irrelevant for parties to refer to these in proceedings, and courts may not base their judgments on the previous rulings of other courts." It is important to remember that a change in mentality in a particular culture does not happen overnight and even a minor step in a new direction should be viewed as a potentially substantial one with some anticipated long-term effects. As such, various developments in the Russian economy, law, and society can be viewed as substantial background for the major developments to take place in the future.

III. COMPARISON WITH OTHER LABOR LAW SYSTEMS AND ENFORCEMENT MECHANISMS

A. Overview of Major Labor Laws and Enforcement Mechanisms in Other Countries

Having taken a close look at one country's labor code and its specific enforcement mechanisms, it is worthwhile to examine basic labor provisions and enforcement options in other parts of the world. The comparison will likely help one appreciate and explain potential benefits and downsides of various legal systems and possibly allow proposed implementation of helpful techniques that have been incorporated elsewhere. The comparison below will involve labor regulations and enforcement mechanisms in the United States of America, the United Kingdom, Australia, and Mexico. These countries were chosen in an effort to compare and contrast Russian labor law with both common law and civil law legal systems. One of the countries chosen, Mexico, has struggled with its own labor laws. The decision was also influenced by practical availability of applicable information and statistics.

1. The United States of America

When it comes to labor and employment law, the United States has a number of governing federal and state statutes. In addition, because the United States has a common law legal sys-
tem, an examination of applicable precedents is also critical to determining the applicable law in various fact patterns. The most important federal statutes that regulate issues of employment law are Title VII of the Civil Rights Act of 1964,214 the Equal Pay Act of 1963,215 the Age Discrimination in Employment Act of 1967 ("ADEA"),216 the Americans with Disabilities Act of 1990,217 and the Family and Medical Leave Act ("FMLA").218

214. The Act prohibits discrimination based on race/color, sex, religion, and national origin. See generally Civil Rights Act of 1964, 42 U.S.C. § 2000 (2006) (amended 1991). In addition, it prohibits unwanted sexual advances, requesting sexual favors from the employee, and verbal or physical contact with the employee based on a sexual nature. Id. The victim of the sexual harassment does not have to be of the opposite sex. Id. As to religion, the employee is allowed to extend a religious accommodation if necessary. Id. § 2000(e)(j). There must be reasonable accommodation of an employee's "sincerely held religious practices" if there will be no undue hardship on the employer. See The U.S. Equal Employment Opportunity Commission, Religious Discrimination, http://www.eeoc.gov/types/religion/html (last visited Jan. 31, 2009). Furthermore, an employer may not discriminate in hiring an employee because she is pregnant or because of a pregnancy-related condition. 42 U.S.C. § 2000(e)(k). If an employee is unable to work because of her pregnancy, she is to be treated as any other temporarily disabled employee would be treated. Id. A pregnant employee must be allowed to work as long as she can do her job duties. Id. "An employer may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth." See The U.S. Equal Employment Opportunity Commission, Pregnancy Discrimination, http://www.eeoc.gov/types/pregnancy.html (last visited Jan. 31, 2009). The Act applies to employers with fifteen or more employees. Civil Rights Act, 42 U.S.C. § 2000(e)(b). In 2007, a total of 61,159 charges had been filed alleging violations of Title VII. See The U.S. Equal Employment Opportunity Commission, Title VII of the Civil Rights Act of 1964 Charges FY 1997-FY 2007, http://www.eeoc.gov/stats/vii.html (last visited Jan. 31, 2009). In 2007, 53,631 charges alleging such violations were resolved. Id.

215. The Equal Pay Act stipulates that men and women be given equal compensation for equal work in the same place of work. Equal Pay Act of 1963, 29 U.S.C. § 201 (2006). The jobs do not need to be identical, but equal. Id. This Act provides that an employer may not pay unequal earnings to men and women who are doing jobs that require the same ability, effort and responsibility and are performed under comparable working conditions in the same workplace. Id.


217. This statute prohibits employers from discriminating against individuals who are qualified but have disabilities. Americans with Disability Act of 1990, 42 U.S.C. § 12101 (2006). It covers employers with fifteen or more employees. Id. § 101(5)(A). A person has a disability if he has a physical or mental impairment that significantly restrictions one or more major life activities, he has a record of having the impairment,
By enacting the Civil Rights Act of 1964, Congress created a special administrative agency, the Equal Employment Opportunity Commission ("EEOC"), which is responsible for enforcing laws prohibiting discrimination in the workplace.\textsuperscript{219} Prior to 1971, the EEOC was in charge of just investigating relevant claims and then referring them to the Department of Justice.\textsuperscript{220} The Equal Employment Opportunity Act of 1972 gave the EEOC the power to perform its own enforcement litigation.\textsuperscript{221} As such, any employee that claims he was the subject of discrimination in the workplace can file a claim with the EEOC and, after careful examination, the EEOC will issue a determination letter and right-to-sue.\textsuperscript{222} The employee then can file the action in federal
district court. In certain instances of what appears to be profound discrimination, the EEOC may choose to pursue the case as plaintiff in federal court. For example just in 2007, the EEOC filed 362 enforcement suits in federal district courts.

The EEOC is one of the busiest administrative agencies in the country. Because the procedure for filing a complaint is very clear and easy to follow, numerous employees and job applicants take advantage of this mechanism. In addition to the user-friendly, free of charge procedure, which basically involves contacting the EEOC office at one of its available locations all over the country, one does not need a lawyer and can follow all these steps on his own. During 1997-2007, the number of charges filed has ranged from 75,428 in 2005 to 84,442 in 2002.

Another similar administrative agency that serves as preliminary stage for resolving labor conflicts and unfair practices in the United States is the National Labor Relations Board ("NLRB"). Created pursuant to the National Labor Relations Act governing relations between unions and employers in the private sector, the NLRB is charged with the task of investigating and remedying unfair labor practices, as well as protecting the rights of employees, employers, and unions. A different federal statute, the Fair Labor Standards Act ("FLSA"), which sets

223. Id.
224. Id.
227. Id.
228. The U.S. Equal Employment Opportunity Commission, All Statutes FY 1997-FY 2007, http://www.eeoc.gov/stats/all.html (race discrimination claims amount to 35%-37% of all charges filed for the ten fiscal years); see The U.S. Equal Employment Opportunity Commission, Charge Statistics FY 1997 through FY 2007, http://www.eeoc.gov/stats/charges.html (last visited Jan. 31, 2009). In 2007, there were a total of 82,792 charges filed with the EEOC. Id. Of all the charges filed, 72,442 were resolved by settlement. In 2006, 75,768 charges were filed and 74,308 resolved.
230. Id.
231. Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 (2006) (The Act requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay. For
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the basic minimum wage and overtime pay, is administered by the Employment Standards Administration’s Wage and Hour Division within the U.S. Department of Labor. Numerous claims are filed pursuant to this statute. For example, in 2006, over 222,000 workers received a total of US$135.7 million in minimum wages and overtime back payments due to the established FLSA violations. Of that total amount, US$120.5 million were granted to workers for back wages payments for violations of overtime regulations and US$15.2 million for violations of minimum wage requirements.

When it comes to issues of retirement, the Employee Retirement Income Security Act of 1974 (“ERISA”) establishes the minimum criteria for most voluntarily instituted pension and health plans in private industry to give protection to the employees in the plans. ERISA also includes the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), which provides certain individuals the right to maintain their health insurance for a period of time after the loss of employment. The Employee

Nonagricultural operations, it restricts the hours that children under age sixteen can work and forbids the employment of children under age eighteen in certain jobs deemed too dangerous. For agricultural operations, it prohibits the employment of children under age sixteen during school hours and in certain jobs deemed too dangerous.


234. Id.


Benefits Security Administration Board is in charge of enforcing and administering these provisions.237

All of the enforcement agencies described are overwhelmed by the number of complaints and work nonstop to address employment and labor disputes.238 In fact, many of the complaints turn out to be frivolous and do not proceed any further after the agency’s determination. However, unlike in the Russian Federation, numerous employees take advantage of these available procedures on a daily basis.239 The explanation probably entails a combination of the clarity, cost-efficiency, and simplicity of the filing procedures with the citizens’ desire to resolve various conflicts through the judicial proceedings in the United States. Unlike Russia, it is well-known that the American culture centers around a citizen’s legal rights and the use of courts and lawyers to enforce them. Accordingly, distinguishable from the Russian people, Americans typically take full advantage of their legal system and its law-related enforcement mechanisms.

2. The United Kingdom

Similar to the United States, the United Kingdom has numerous administrative agencies, which are responsible for various aspects of the enforcement, regulation and service for the labor market. The National System of Labour Administration ("NSLA")240 is responsible for overseeing all of these labor-re-

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237. Id.
238. See, e.g., Marion Crain & Ken Matheny, Labor’s Identity Crisis, 89 CALIF. L. REV. 1767 n. 257 (2001).
240. Jason Heyes, Labour Administration in the United Kingdom, (Normand Lecuyer ed., 2001), available at http://www.ilo.org/public/english/dialogue/ifpdial/downloads/gllad/uk.pdf; see About the ILO, International Labour Organization, http://www.ilo.org/global/About_the_ILO/lang—en/index.htm (last visited Nov. 16, 2008) (The Labor Administration works towards "advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity."); Heyes, supra note 240, at 11 (the National System of Labour Administration’s ("NSLA") critical issues of operation are delegated to independent non-departmental public organizations, including Advisory, Conciliation and Arbitration Service ("ACAS"), Commission for Racial Equality ("CRE"), Equal Opportunities Commission ("EOC"); Id. at 27 (There are various others agencies that assist with employment-related issues. For example, Race Relations Employment Advisory Service ("REAS") has the task of enforcing the government race equality at the workplace policy); Citizens Advice Bureau, http://www.citizensadvice.co.uk/en/About-Us/What-
lated bodies in the United Kingdom. Created in 1995, the Department for Education and Employment ("DfEE") contains several directorates, including the Employment & Lifelong Learning & International Directorate, which, among other functions, oversees issues of equal opportunity and employment policy. The DfEE represents the United Kingdom to the European Union on its Employment and Labor Market Committee.

Numerous independent organizations play an important role in the enforcement and operation of the labor-related laws and standards. Of special importance is the Advisory, Conciliation and Arbitration Service ("ACAS"), a non-departmental body, governed by an Independent Council. The ACAS is assigned the task of improving working life through better employment relations. It offers independent service for dealing with disputes between groups of workers and their employers. It also deals with claims of employees claiming denial of rights. ACAS does not have the power to impose or recommend settlements. It deals with complaints of unfair dismissal, breach of contract, equal pay, and discrimination. However, a different organization, the Equal Opportunities Commission ("EOC") is in charge of promoting equality between men and women and for reviewing the Sex Discrimination Act and the Equal Pay Act. The EOC provides help to individuals intending to take a

We-Do/ (last visited Jan. 31, 2009) (The Citizens Advice Bureau ("CAB") advisors explain options and possible outcomes for resolving problems in the workplace. The advisors provide specialist information in fourteen different areas, including employment legislation); see generally Advisory, Conciliation and Arbitration Service ("ACAS"), http://www.acas.org.uk/index.aspx?articleid=1953 (last visited Jan. 31, 2009) (In addition, the Labour Relations Agency is responsible for promoting the improvement of employment relations in Northern Ireland).

241. The Employment Relations Directorate offers guidance on policy and legislation involving individual employment rights, work hours, holidays, and pay, as well the operation of employment agencies. It is also responsible for enforcement of employment agency law. Heyes, supra note 240, at 5-6.
242. Id. at 5.
243. Id. at 6.
244. Id. at 33.
245. Id.
246. Id.
247. Id.
248. Id.
249. Id. at 33.
case under the Sex Discrimination Act and the Equal Pay Act. An employment tribunal hears cases involving work-related legal disputes. Filing a claim with the Employment Tribunals is free of charge. A tribunal initially checks whether a claim is legitimate and can be heard. If there is a doubt as to whether a claim has basis, a preliminary hearing will be held to make a determination. A tribunal can order the employer to pay compensation for discrimination or dismissal on health and safety grounds. If the complainant loses the case, the tribunal will grant an appeal, although on limited grounds.

In addition to various options or seeking relief through non-governmental bodies and employment tribunals, the Central Arbitration Committee ("CAC") is responsible for arbitrating employment-related disputes that are referred to it by various trade unions and employers. It also arbitrates unilaterally under the Union and Labor Relations (Consolidations) Act of 1992. Based on the recent Employment Relations Act of 1999, the CAC has been overseeing and enforcing the new trade union

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251. Heyes, supra note 240, at 28.

252. Id.

253. Id. at 32.


255. Id.

256. Id.

257. Id. When it comes to issues of health and safety, the Health and Safety Executive ("HSE") has the duty of enforcing such legislation on a daily basis under guidance from the Health and Safety Commission. See Heyes, supra note 240, at 28; see also Heath and Safety Commission (HSC) and Health and Safety Executive (HSE) Framework Management Statement (2006), available at http://www.hse.gov.uk/aboutus/howwework/management/proposedstatement.pdf.

258. See generally Directgov, supra note 254.


recognition procedures introduced by the Act.\textsuperscript{261} Therefore, the United Kingdom has numerous procedures outlining options for resolving work-related dispute issues. These procedures for enforcement are easy to follow as many different organizations are offering employees assistance and appropriate services. The setup is worker-friendly and free of charge and thus numerous employees take full advantage of the system.\textsuperscript{262} For example, in 2006-07 the ACAS helpline responded to approximately 850,000 inquiries.\textsuperscript{263} During the same period of time, the ACAS settled a total of 105,000 cases and assisted in over 900 collective disputes (ninety-five percent of all disputes were resolved with the ACAS's assistance).\textsuperscript{264} Moreover, the ACAS had successful resolution in ninety percent of cases and it participated in 134 individual mediation cases resolving about eighty percent of those cases.\textsuperscript{265}

Similar to the United States and unlike Russia, it is very common to take advantage of the legal system and protective laws in the United Kingdom, so workers typically pursue what they believe they are entitled to when it comes to work-related disputes.

3. Australia

In Australia, the Human Rights and Equal Opportunity Commission ("HREOC") was established by an Act of the federal Parliament.\textsuperscript{266} It is an administrative agency that investigates complaints of discrimination and alleged violations of human rights.\textsuperscript{267} In addition to investigation, it can negotiate and seek resolution of the dispute.\textsuperscript{268} If the claim is not properly re-

\begin{footnotesize}
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  \item \textsuperscript{261} Id.; see also Heyes supra note 240, at 35.
  \item \textsuperscript{262} Heyes supra note 240, at 33.
  \item \textsuperscript{263} ACAS, ANNUAL REPORT AND ACCOUNTS 2006/07, at 5, available at http://www.ecacas.co.uk.
  \item \textsuperscript{264} Id.
  \item \textsuperscript{265} Id. at 5, 28.
\end{itemize}
\end{footnotesize}
solved, it may be referred to the tribunal.\textsuperscript{269} The HREOC is considered to be a neutral third party and the service is free, informal and easily available.\textsuperscript{270} An employee may file a complaint with the HREOC if he believes he was refused employment, discharged, harassed, denied equal training opportunities, or given less favorable terms of employment for discriminatory reasons.\textsuperscript{271} The HREOC is able to investigate complaints of discrimination based on a number of categories, including: disability, sex, marital status, sexual harassment, race, ancestry, national origin, religion, and others.\textsuperscript{272} In Australia, discrimination in various areas of public life, including employment, is illegal.\textsuperscript{273} The disputes are resolved by a conciliation process with its possible outcome ranging from an apology or reinstatement of a position to compensation for lost wages.\textsuperscript{274} The HREOC applies to apprentices, trainees, part-time, and full-time workers.\textsuperscript{275} Most complaints received have to deal with discrimination in employment.\textsuperscript{276}

Similar to the United States and United Kingdom, Australia uses an administrative agency as a preliminary station for investi-


\textsuperscript{271} Human Rights and Equal Opportunity Commission Act, 1986, § 11 (Austl.).


gating and evaluating labor and employment-related disputes. As in the other two countries, this initial procedure is easy to follow, free of charge, and does not require the presence of a lawyer. Accordingly, employees are encouraged to take advantage of it and, just like the EEOC in the United States, the HREOC is a very busy agency that evaluates numerous complaints on a daily basis. Similar to the other two countries, resolution of employment-related disputes can take place in various forms, ranging from seeking counseling from the agency to enforcing one's rights in a court of law. Like the United States and the United Kingdom, and distinguishable from Russia, the Australian society is very much accustomed to taking advantage of its legal system and it is pretty typical for citizens to follow the above-described procedures with the expectation of arriving at an appropriate resolution that is mandated by the law.

4. Mexico

Mexico’s approach to resolving labor and employment disputes is of special interest because, like Russia and in contrast to the United States, the United Kingdom, and Australia, Mexico is a civil law country. Labor matters in the Mexican Republic are regulated by the Federal Labor Law ("FLL"), which creates

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277. For example, in 2004 the HREOC received a total of 1036 total complaints. See Human Rights & Equal Opportunity Commission, Five Years On: An Update on the Complaint Handling Work of the Human Rights and Equal Opportunity Commission, http://www.hreoc.gov.au/complaints_information/publications/five_years_on.html. Out of those, 152 complaints alleged violations of the Racial Discrimination Act, 341 claims were based on the Sex Discrimination Act, 503 complaints dealt with issues involving the Disability Discrimination Act and forty claims alleged violations of the Age Discrimination Act. Id. As a result of the HREOC’s involvement in 2004, 42% of all claims were conciliated; 21% referred/terminated with no reasonable prospect of conciliation; 27% declined/terminated; and 10% of all complaints were withdrawn. Id. Among others, the following payments were obtained that same year: US$5250 for racial discrimination; US$5700 for sex discrimination, and US$5000 for disability discrimination. Id. At the end of 2004, 66% of all claims that attempted conciliation were successfully resolved. Id.

minimum rights and responsibilities for employees and employers.\textsuperscript{279} The Federal and State Labor Boards are in charge of finding solutions for disagreements arising between an employer and employee.\textsuperscript{280} It is very important to note that unions play a very important and highly political role in the Mexican labor market.\textsuperscript{281}

The Board of Conciliation and Arbitration (Labor Board) serves as an enforcement mechanism for labor regulations.\textsuperscript{282} A worker can file a complaint with the Labor Board for consideration.\textsuperscript{283} If an employee prevails, he will be reinstated to his previous position plus he will be eligible for “all back wages that were incurred while the court process was going on.”\textsuperscript{284} Just like similar organizations in other countries discussed above, the Labor Board is very busy handling workers’ claims on a daily basis.\textsuperscript{285}

All workers in Mexico can receive free legal advice from the Fed-

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\item \textsuperscript{279} See Mexican Federal Labor Law, http://laboris.uqam.ca/babillard/mexlaborlaw.htm (last visited Jan. 31, 2009); see also \textit{Vargas}, \textit{supra} note 278, at 153.
\item \textsuperscript{280} Mexican Federal Labor Law, \textit{supra} note 279 (noting the federal and state labor authorities are entrusted with administrative functions, mainly with the “supervision and application of the FLL regulations.”); see also \textit{Vargas}, \textit{supra} note 278, at 182.
\item \textsuperscript{281} See generally \textit{Mexico Connect}, \textit{supra} note 278. “Labor unions are recognized under the Federal Labor Law as a means of the employees uniting to protect their common employment rights.” \textit{Mexico Law Labor, Labor Relations in Mexico}, http://www.mexicolaw.com/LawInfo11.htm (last visited Jan. 31, 2009).
\item \textsuperscript{282} See \textit{Mexico Connect}, \textit{supra} note 278. The Labor Board is responsible for resolution of labor disputes between employees and employers. Commission for Labor Cooperation, Guide to Resolving Labor Disputes in Mexico 3, http://fr.naalc.org/migrant/english/pdf/mgmexrld_en.pdf (last visited Jan. 31, 2009). After a complaint has been filed, it will initially attempt to reach an agreement between an employee and employer via conciliation. \textit{Id.} There are no lawyers involved at that stage. \textit{Id.} If successful resolution does not take place, the next stage of the proceeding involves proving that the allegations are true and lawyers may be present. \textit{Id.}
\item \textsuperscript{283} See generally \textit{Mexicanlaw.com}, \textit{supra} note 278.
\item \textsuperscript{284} \textit{Mexico Law Labor, supra} note 281, para. 5.
\item \textsuperscript{285} It is of interest to examine the 2007 annual report for Federal Mitigation and Arbitration Board for Labor Disputes. \textit{See} 2007 Federal Mitigation and Arbitration Board for Labor Disputes Ann. Rep. pages. (Lorena Sander, trans.). In terms of Collective Disputes, the report states that there were 360 cases, mostly resolving differences within unions with fifty-eight recounts to determine how many members a union had (the union with most members typically negotiates the union contract with management). \textit{Id.} Also in 2007, out of 8106 calls to strike, 4936 were successfully mitigated; issues relating to thirty-six strikes have been settled and forty are still pending. \textit{Id.} In addition, a total of 28,750 claims dealing with contracts issues have been filed. \textit{Id.} The 2007 report also states the following figures: administration of justice-individual conflicts: a total of 146,762 cases with the 24.1% increase from 2006; special panels—a total of 62,898 cases filed; and mitigation—a total of 12,510 disputes resolved. \textit{Id.} Finally, 579 complaints were brought against Labor Tribunal. \textit{Id.}
eral Public Labor Defender’s Office (“FPDO”). The FPDO will provide assistance in finding solutions to employment-related disputes, such as dismissals, legal benefits, general employment conditions, discriminatory treatment on the job, and others. If a worker requests, the FPDO will represent him in front of the Labor Board.

Although the Mexican unions initially resemble the Russian trade unions and the involvement of various organizations may be compared to the Russian *profkoms*, the Mexican procedure for enforcement of labor rights is much more organized and easy to follow. In addition, the Mexican unions are committed to enforcing the rights of workers, while the management in Russia seems to be able to manipulate every step of the process, including the participation of the unions, and insert its version of the story even in court, thus making it not worthwhile for Russian workers to fight for their rights. Also, similar to the United States, the United Kingdom, and Australia, the Mexican culture seems to be accustomed to enforcement of one’s legal rights, thus making it distinguishable from the Russian mentality that lacks faith in the rule of law. As a result, despite being a civil law country, the approach to enforcing its citizens’ labor rights in Mexico resembles such historically common law countries as the United States and the United Kingdom, while being different from Russia, another civil law country. The differences mostly lie in the approach to enforcing one’s legal rights in a court of law or available alternative, and in the actual structure of the enforcement mechanisms.

B. Why is Russia’s Law Enforcement so Different from Other Countries?

The analysis reveals that, unlike Russia, other countries are able to take substantial advantage of their labor and employment
provisions. It is of interest that this is true of all three common law countries (the United States, the United Kingdom, and Australia), as well as a civil law country (Mexico). The explanation lies in a combination of various factors. First, the Russian Labor Code appears to be a more complex and less user-friendly type of legislation than its equivalents in other countries. Most important, although a number of organizations are involved with potential violations and enforcement issues, there seems to be no single authority that would be delegated control of enforcement and given the task of providing assistance to employees all over the country. Unlike other countries discussed, there is no particular office or website that would assist the Russian workers with enforcing their labor rights free of charge. Instead, there are various entities that can potentially participate but do not really have a strong record of the same. As such, the enforcement process is less clear and more complicated. Moreover, as previously discussed, Russia has a cultural history of rejecting the law and failing to take advantage of the existing legal system. As a result, numerous violations of the labor law go without a remedy with many enterprises merely engaging in oral agreements and completely avoiding any applicable provisions of the Labor Code. This lack of enforcement certainly creates a problem for Russian society and needs to be addressed in various ways.

IV. 'GO RUSSIA!'—THE FUTURE PATH OF THE RUSSIAN LABOR LAW

And so in conclusion, I wish to reiterate a catch phrase that is really relevant to our times, namely the slogan of today’s forum: ‘Go Russia!’

Dmitry Medvedev, President of the Russian Federation

The biggest challenge that Russia had to face after the collapse of the Soviet Union was the reform of its economy and the resulting “transition to free-market democracy.” Eventually, it was understood that an attempted quick transformation of Russia into a “vibrant, prosperous free-market democracy integrated into the Western world” was not going to happen overnight and

there would be a few bumps on the road.\textsuperscript{294} As such, an important question at the beginning of the new millennium was "whether Russia can reverse the trend of its first post-Soviet decade and rebuild an effective state or whether it will move further along the path to collapse, with all the far-reaching consequences that would entail, both in human suffering and in geographical dynamics."\textsuperscript{295} Although the answer may have been different a few years ago, it is now certainly clear that Russia has successfully reversed the initial trend and is far from collapsing. With all the challenges and drawbacks, it is agreed that the "new Russia is working."\textsuperscript{296} It is critical to remember that the American economy did not develop or become established overnight\textsuperscript{297} and, considering its starting point during the Soviet time, Russia has really come a long way in transforming its economy, structure, and political regimes.\textsuperscript{298}

Although at a first glance, the developments in the Russian legal culture, especially in the area of labor and employment law, appear to be less than substantial, they are still indicative of the beginning of this transformation process that will eventually lead to serious change. Like many other steps in the transformation process, the effect of the current version of the Russian Labor Code on its legal culture is two-fold. On the one hand, as discussed in this Article, it contains a number of old legal provisions that are not compatible with the new free market and economy because its initial draft was produced during the old Soviet times and some of its provisions are not fitting in the new structure of Russian society. On the other hand, a number of important provisions have been altered and added to reflect these changes, which also demonstrates the legislators' appreciation for the need to adjust and develop the law to match the changes and developments in the society.

Of critical importance here, however, is the lack of enforce-

\textsuperscript{294} Id. at 2.
\textsuperscript{295} Id.
\textsuperscript{296} Bean, supra note 116, at 996.
\textsuperscript{297} Id. "It should be further noted that despite experienced, sophisticated, well funded enforcement personnel, scandals and abuse emerge regularly in the U.S. economy." \textit{Id}.
\textsuperscript{298} "Experience over the past ten years has confirmed that there is no simple, straightforward way to convert a command economy that is dominated by military-oriented production into a consumer-oriented market economy." Bean, supra note 116, at 996.
ment of the law based on the cultural lack of faith in the law and available legal system. A philosophical question of why people choose to follow the law does not have a simple answer. One way to look at this dilemma is not to assume that human behavior responds primarily to punishment and reward, but rather to recognize that human behavior is likely affected by the "legitimacy of legal authorities and the morality of the law." For example, one scholar argues that focusing merely on "manipulating penalties and incentives" is improper. In fact, the focus should be the creation of a "normative climate that promotes the acceptance of law and public policies."

An argument can be made that the cultural lack of faith in the law is currently undergoing a transformation in Russia although this transition will still take time to develop. The society's appreciation of the rule of law will continue to develop along with all its economic changes and it will eventually become a part of the Russian society, although it may still differ from what is most familiar to a Westerner. In reality, such changes often begin with the government's endorsement of the idea and this appears to now be happening in the Russian Federation.

On January 22, 2008, then-Russian presidential candidate (currently President), Dmitry Medvedev, spoke to non-governmental workers at Moscow Civil Forum. In his speech, Medvedev criticized widespread illegality in Russia, mostly using illegal production of CDs and DVDs as example. He specifically opposed "legal nihilism" and stated that, "No European country can boast of such disregard for the law." It does not matter whether the speech concerned copyright or labor law enforcement; what is critical is that it demonstrates that the Rus-

300. Id.
301. Id. Tyler argues that:
People obey the law because they believe that it is proper to do so, they react to their experiences by evaluating their justice or injustice, and in evaluating of their experiences they consider factors unrelated to outcome, such as whether they have had a chance to state their case and have been treated with dignity and respect.
303. Id.
304. Id.
sian government has admitted the existence of this historically established lack of respect for the law and it is taking a stand against nihilism, which will eventually cover all areas of law, including labor. When it does, the new legislation may have to produce a brand new version of the Labor Code that will make it very easy to enforce one’s rights and will encourage employees to do so. It may be best to then create a brand new document and give it a different name in order to open a new page in the history of labor law and avoid the criticism that the initial version of the Labor Code created during the Soviet era. It is hard to predict the exact time frame for this change. However, considering how many changes Russia went through in just the last fifteen to twenty years, this may happen a lot sooner than one thinks. In the end, it will require the efforts of many to get to this new step. “Progress in the new Russia to date has required—and further progress toward a prosperous market economy in the new Russia will continue to require—the incessant efforts of many millions of democratically inclined consumers, voters, business leaders, legislators, lawyers, and government officials.”

Other countries will also have a chance to take part in and maybe even influence the transition of the Russian cultural perception of the rule of law as they will continue doing business with, providing expertise to, and remain connected to Russia. It will be exciting to observe such fascinating changes. “Russia is central to our world—and the new world that is being born.”

305. Bean, supra note 116, at 996.