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REALIZATION OF THE INTERNATIONAL LABOR STANDARDS AT THE ENTERPRISES OF THE FREE PORT OF VLADIVOSTOK: WILL THE INVESTORS SAY THE LAST WORD?

Ella Gorian

Institute of Law, Vladivostok State University of Economics and Service, Vladivostok, Russian Federation

ella.gorian@gmail.com

Svetlana Litvinova

Institute of Law, Vladivostok State University of Economics and Service, Vladivostok, Russian Federation

svetlana.litvinova@vvsu.ru

Abstract

The special legal regime of the free port of Vladivostok simplifies the attraction of foreign labor force to enterprises. The current legislation of the Russian Federation does not fully guarantee the rights of such workers who have the status of labor migrants, since the current international standards for the protection of their rights are not ratified by the Russian Federation, nor are international standards for protecting the rights of indigenous peoples. The aim of this work is to analyze the issues of ensuring international labor standards at the enterprises of the free port of Vladivostok and to consider the theoretical aspects of this problem. In order to obtain the most reliable scientific results, a number of general scientific (system-structural, formal-logical and

hermeneutical methods) and special legal methods of cognition (comparative legal and formal-legal methods) were used in complex. The results of the study are provisions on the need to include residents of the free port of Vladivostok in the system of shared responsibility of participants in the global supply chain and using one of the available models: a model of individual responsibility or a model of shared responsibility of companies to employees in the enterprise. The obtained results can be used for qualitative improvements of institutional and regulatory and socio-economic conditions for the development of the Far East, as well as for certain zones with a special economic regime of functioning. The author came to conclusions about the difficulties that exist in the way of ratification and further implementation of international labor standards: corruption, imperfect legal and institutional mechanisms, the lack of political will to resolve problems. The author sees the solution to the existing problems in the active participation of resident companies in securing the rights of workers in their enterprises located in special economic zones.

Keywords

Free Port Of Vladivostok, Migration, International Labor Standards, Indigenous Peoples, Corruption, Global Supply Chain, The Concept Of Individual Responsibility Of Company, The Concept Of Shared Responsibility Of Companies

1. Introduction

Since 2012, development of the Far Eastern Federal Region in terms of establishing the special economic zones (hereinafter referred to as SEZ), introduction of the preferential tax regime, and granting plots of land to their residents has become one of the Russian Federation's domestic lines of policy. As it is known, the territories with a special economic regime are gaining popularity in the states that have set a goal to attract investments and bring their economies to a higher level (Hamidi, 2016). The government puts the majority of hopes for the development of the Far Eastern Federal Region on the SEZ regime, called the Free Port of Vladivostok (hereinafter referred to as FPV). The territory, to which this regime applies, covers the districts of Primorsky Krai, Khbarovsk Krai, Sakhalin Oblast, and Chukotskiy Autonomous Okrug. As of today, among the residents of the FPV there are more than 150 companies that provide 21,000 jobs. In spite of the optimistic forecasts made by the Corporation for Development of the Far East regarding the increase of jobs to 51,000 by 2020 (Statistics

summary, 2017), the exodus of able-bodied population continues being compensated by the influx of labor migrants represented by the natives of the Central Asia, China and Korea (Primorye in figures, 2015). The level of illegal migration in the region is rather high, because the opportunity to get work for foreigners is limited by the quotas for issuance to the foreign nationals invitations for entry to the Russian Federation for the purpose of carrying out labor activities, as well as by the quotas for granting work permits to foreign citizens. Lack of efficient supervision on the part of the authorized governmental agencies, as well as their corruption, inefficient sanctions against employers hiring illegal migrants - all these factors contribute to the growth of illegal migration in the region (Kakosimou, 2017). Although the legislation simplifies the procedure of obtaining by foreign citizens of the work permit by way of cancellation of quotas and does not require from the employers residing in the FPV to obtain special permissions, nonetheless, the mechanisms of the state control over illegal migration in the FPV are still not developed. This allows the employers who are the residents of the FPV to hire in mass for work in their enterprises the migrants who are, for a number of reasons, vulnerable to labor exploitation and slavery, notwithstanding the fact that the Russian Federation's labor legislation is used in the FPV for regulation of labor relations.

The principal objectives of the study were as follows.

- To study the issues of implementation of international labor standards for migrants and indigenous people by Russian Federation.
- To identify the concepts of ensuring international labor standards at the enterprises of the free port of Vladivostok.

The respect of human rights in business relationships and operations of companies is the new reality of doing business. International labour standards are the core issue of a whole system of human rights in many countries where multinational companies stake their enterprises. The first comprehensive and interdisciplinary textbook that addresses these issues is "Business and Human Rights: From Principles to Practice" (Baumann-Pauly & Nolan, 2016). In "Building a Treaty on Business and Human Rights" S. Deva and D. Bilchitz emphasize on establishing a business and human rights treaty which would be to address the gaps in law that exist surrounding corporate activity that has an impact on fundamental rights (Deva and Bilchitz, 2017). The role of investors in human rights ensuring mechanism is highlighted in works

performed by experts of The NYU Stern Center for Business and Human Rights (O'Connor & Labowitz, 2017; Segall & Labowitz, 2017).

2. Methodology

In order to obtain the most reliable scientific results, a number of general scientific (system-structural, formal-logical and hermeneutical methods) and special legal methods of cognition (comparative legal and formal-legal methods) were used in was complex.

International organizations issue differing recommendations relating to labor protection in the Special Economic Zones. For example, WTO does not put a special emphasis on the rights of workers in the Rules and Practice of Applying Export Policy (WTO Rules, 1997). In 1996, during the Singapore Ministerial Conference of WTO, the members of the organization confirmed their commitment to compliance with the internationally recognized basic labor standards, and referred to ILO as 'a competent organization' for development of such standards. In the Singapore Declaration of Ministers, the WTO members: 1) affirm their support for the work of ILO in promoting internationally recognized core labor standards; 2) believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards; 3) reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question; 4) note that the WTO and ILO Secretariats will continue their existing collaboration (Singapore WTO Ministerial, 1996).

ILO has prepared a number of reports concerning the labor conditions in the SEZ. However, none of them contains relevant data about the countries where the laws allow different labor standards in the free trade zones. In the report issued in 2008, ILO investigated the practice of activity pursued by transnational corporations in the countries that are parties to the free-trade agreements. It was stated that such countries realize unequally their labor standards. Although labor conditions in the SEZ are sometimes better than in the country as a whole, poor work conditions in terms of overtime, occupational safety and health, salary and freedom of association remain a problem for all zones (Milberg & Amengual, 2008).

The International Labor Organization has developed and approved appropriate legal mechanisms for ensuring the rights of migrant workers, those mechanisms have been ratified by many developing countries, however, de facto, the rights of workers are still being violated. This

can be attributable to both the imperfection of the national mechanisms, and to the reluctance of the states to lose investors who place their businesses on the territories of those countries and establish private labor norms, as well as to the actual absence of the mechanisms of control over their activity.

Russia has ratified all eight fundamental conventions of ILO pertaining to the underlying rights and principles in the sphere of labor. As to four priority conventions of ILO, only three of them were ratified by Russia: Labor Inspection Convention, 1947 (No. 81), Employment Policy Convention, 1964 (No. 122), Tripartite Consultation (International Labor Standards) Convention, 1976 (No. 144). These conventions together with Labor Inspection (Agriculture) Convention, 1969 (No. 129) are singled out into a special group for the purpose of facilitating their ratification by a maximally large number of the countries-members of ILO.

Special attention is warranted by the use in the FPV of the international labor standards fixed in four technical conventions: Workers' Representatives Convention, 1971 (No. 135), Workers with Family Responsibilities Convention, 1981 (No. 156), Termination of Employment Convention, 1982 (No. 158), Indigenous and Tribal Peoples Convention, 1989 (No. 169), only the first two of which were ratified by the Russian Federation.

Indigenous peoples live on the territory of the FPV, and for ensuring and protecting their rights ILO has developed additional guarantees aimed at protection of the persons belonging to respective peoples, their institutions, property, labor, culture and environment. Article 5 of the Convention No. 169 provides for the liability of the state: a) to recognize and protect social, cultural, religious and spiritual values and practice of indigenous peoples and duly consider the nature of the problems that they face as groups and as individuals; b) to respect inviolability of the values, practice and institutions of the said peoples; c) to pursue policy aimed at mitigation of difficulties experienced by the said peoples due to the new conditions of life and work, with involvement of the respective peoples and in cooperation with them. When using the above-mentioned provisions, every time, when the matters of taking legislative or administrative measures are being discussed and can directly affect indigenous peoples, the governments should hold consultations with these peoples using appropriate procedures, whereby the said peoples can freely, and as a minimum not less than other groups of population, participate in the decision making on all levels in the elected bodies and in the administrative and other bodies responsible for the policy and the program relating to those indigenous peoples.

The situation is also difficult in the sphere of application of the international labor standards in the area of migration. The Russian Federation refuses to ratify the Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). These instruments establish the system of guarantees for the migrants' rights, which allows to develop and implement more efficiently the policy in the sphere of migration. However, the specialists in the sphere of the labor law believe that ratification of such conventions is premature, because under the current economic conditions the protection of the national labor market in particular is necessary (Lyutov, 2010). It is hard to agree with them, because the number of immigrants in Russia is growing, whereas the lack of the efficient guarantees of their rights is one of the reasons for labor exploitation and slavery.

3. Results and discussion

The existing state and regional policies of Russia do not take into account the interests of indigenous peoples, moreover, their rights and legitimate interests are the object of constant violations on the part of the local authorities. For example, in the sphere of traditional fishing, the principle of priority in providing aquatic biological resources in the areas of compact settlement of the indigenous minorities is violated, along with limitation of the right for harvesting and diversity of the aquatic biological resources and conducting traditional fishing. Formation of the fishery areas in the places of the indigenous minorities' compact settlement (Terneyskiy, Olginskiy and Lazovski districts) is impossible, because during the formation of the harvesting areas (mariculture cultivation areas, and others) the conditions of the tenders do not contain references for the priority right of the indigenous peoples established by the federal legislation (Gorian, 2016). Representatives of indigenous peoples are not provided with the hunting grounds to a sufficient extent, for example, in 2012, the hunting grounds in the areas of the indigenous minorities' compact settlement made up only one percent, the rest of the hunting grounds was set aside for sports and amateurish hunting of other persons, for whom hunting is not the basis of their traditional lifestyle and carrying out traditional economic activity. Besides, the territories of indigenous peoples' habitation tend to decrease every year due to the illegal takeover by the timber logging companies (Report..., 2012). As evident from these examples, the rights of the indigenous peoples are violated under the ordinary legal regime, whereas a special legal regime of the FPV, providing for granting to the residents the plots of lands that are

not the territories of the traditional use of natural resources, in view of the complexity of obtaining this status and sabotaging the efforts of the indigenous peoples by local authorities, will further complicate the difficult situation that has formed in the Far East.

Fulfillment of the provisions of the Convention No. 169 would allow to protect the rights of the indigenous peoples for pursuing their traditional lifestyle and protect their native environment against spreading to it the FPV regime. However, the Russian Federation has not ratified Convention No.169 yet, which is attributable to the mismatch between its key provisions (establishing the notions ‘indigenous people’, ‘land’, etc.) and the legislation, in particular, the Constitution of the Russian Federation.

In our opinion, by its refusal to implement international labor standards and the standards of the rights of the indigenous peoples, the Russian Federation becomes similar to those developing nations that find various excuses for non-alignment to the said instruments. Therefore, lately there is a tendency for advancing the institute of corporate responsibility of the companies that constitute a production chain (Baumann-Pauly & Nolan, 2016). Those companies that place their production in the countries where the system of international labor standards is not applicable, are realizing the policy of ensuring the rights of workers (including migrants) at their own enterprises at their own expense (Deva & Bilchitz, 2017). In this endeavor they are supported by the Organization for Economic Cooperation and Development (OECD), which published updated Guidelines for multinational companies, including recommendations on the responsible conduct of business in the context of globalization (OECD Guidelines..., 2011). According to this document, companies that do business in the countries-members of OECD, are obligated to exercise ‘due diligence’ for observing by them and their suppliers of the agreed standards of ‘good corporate behavior’, in particular: 1) respect human rights, which means that they should avoid prejudicing the rights of a person and other individuals, and should take into account the negative effects of the human rights issues on the persons with whom they are involved in some activities; 2) in the course of their activities, not cause or contribute to the negative impact on the human rights and prevent such impact, when it happens; 3) find the ways for prevention or mitigation of the negative effect on the human rights, which arises directly as a result of their economic activity, products or services, even if they are not involved in those consequences; 4) pursue the policy of commitment to respect of the human rights; 5) conduct complex inspection of the human rights in accordance with their scope, nature and context of

activity and the severity of risks related to the negative effect on the human rights; 6) ensure or cooperate by way of lawful processes in the rehabilitation after negative effect on the human rights where they determine that they have caused or contributed to such effects (OECD Guidelines..., 2011). Section IV of the Guidelines, addressing the human rights, to a significant degree rests upon the Guidelines of the Entrepreneurial Activity in terms of the human rights, as approved by the Human Rights Council of the UN (Guiding Principles..., 2008).

As of today, two different approaches to the socially responsible global supply chain have been formed (Hemphill & White, 2016). Thus, The World Economic Forum (WEF) has recently advocated the approach of 'shared responsibility', which involves coordinating the actions of companies, local authorities and international organizations (Shared responsibility..., 2015). In contrast to it, Nike Corporation has chosen a strategy, which emphasizes individual responsibility of the company in the countries and at the enterprises, where it can ensure and control the international labor standards and secure human rights. The researchers posed the following question: to what extent the decision of Nike to limit their responsibility by the countries and enterprises is a reasonable and acceptable policy? (Hemphill & White, 2016). To answer this question, they cited the example of Levi Strauss & Co. In 1993, the management of this company faced a choice: whether or not to place the production facilities in China, taking into account the problem with securing the human rights. Having made the choice in favor of China, they developed and started to use a corporate approach of principled reasoning based on the ethical values of the company and recently adopted universal principles of sourcing (sourcing means optimization of the company's procurement activity processes aimed at saving and increasing profitability). Such a principled reasoning approach can be used by other companies as a way of making decisions in case if they opt for using the model of shared responsibility (Paine & Katz, 1994). Therefore, the decision by Nike to limit its responsibility by own enterprises cannot solve the real problem that requires from the companies liabilities on taking joint actions for protecting labor rights of the company's employees (Posner, 2013).

4. Conclusion

There are certain problems with the implementation of international labor standards for migrants and indigenous people by Russian Federation: corruption, imperfect legal and institutional mechanisms, lack of political will for resolving the problems. Therefore it is obvious

to refer to the totally new mechanism for ensuring the rights of workers. The key role in it is played directly by the companies that respond to the world trend of socially conscious consumption: the consumers in the developed nations opt for the products manufactured without violation of the human rights and without causing harm to environment. The latest tendencies are indicative of the increasingly active participation of the multinational corporations in ensuring the rights of workers at their plants, which are located for the most part in SEZ (O'Connor & Labowitz, 2017). Corporations may use one of the developed approaches – the one of individual responsibility or shared responsibility for the achievement of the set goal. Hence, the residents of the FPV in particular will have to assume an active position in the matter of ensuring international labor standards at their enterprises, because the Russian state for various reasons is not able to be such a guarantor.

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