CONFERENCE REVIEW NOTES

INTERNATIONAL SEMINAR "LABOUR RELATIONS IN THE BRICS COUNTRIES IN THE CONDITIONS OF PRECARIZATION OF EMPLOYMENT"

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Introduction

The International Seminar "Labour Relations in the BRICS Countries in the Conditions of Precarization of Employment" took place in *Tyumen, Russia* on *20–22 February 2020*. The event was hosted jointly by the Department of Labour Law and Entrepreneurship of the University of Tyumen and the *BRICS Law Journal*.

The Seminar was attended by researchers from Brazil, South Africa, Germany and Russia. The academic event became a platform for constructive debates, discussion of topical issues and knowledge-sharing. The participants noted the importance of holding the Seminar as a basis for further long-term research cooperation.

1. Labour Relations in the BRICS Countries in the Conditions of Precarization: New Challenges

According to the International Labour Organization (ILO), more than 60% of the world's working population is engaged in informal employment and 93% of global

informal employment falls on emerging and developing countries.[1] The transformations taking place in the world under the influence of globalization and digitalization significantly change the nature and organization of labour. On the one hand, these trends are a challenge to the traditional labour market and social policies, which should become more flexible in the current conditions. On the other hand, given the high prevalence of informal employment, they require the formation of a legal framework to recognize the status of workers in the face of the emergence of new employment forms, as well as to provide guarantees of adequate protection for workers.

The executive editor of *BRICS Law Journal* Professor Elena Gladun, in her welcoming remarks to the participants at the Seminar, emphasized that as the country holding the chairmanship of the BRICS in 2020 Russia is intensifying discussions and implementation of agreements in the field of research cooperation. The agenda of the Seminar confirms that cooperation in research between the BRICS countries in the social and labour spheres as well as sustainability of the social security system and the future development of employment relations are crucial. Professor Gladun expressed the hope that the proposed discussion platform would allow participants not only to exchange views on related issues, but also to suggest possible solutions.

2. Summary of the International Seminar "Labour Relations in the BRICS Countries in the Conditions of Precarization of Employment"

Elena Machulskaya, Professor in the Labour Law Department at Lomonosov Moscow State University (Russia), a member of the Committee of Experts of the ILO, a 2011–2016 member of the European Committee of Social Rights and a member of the President's Committee of the Russian Federation on the Rights of Persons with Disabilities, opened the discussions with her presentation "Human-Centered Agenda for the Future of Work." Analysing the current situation of the labour market, Professor Machulskaya noted that factors such as non-standard employment, unemployment, underemployment, informal employment, the lack of broader social transformation, and job and income insecurity can be considered to be the primary constraints on the formalization of employment and labour relations. Moreover, the formalization of labour markets is a priority for the BRICS member states, which is something that was enshrined in the BRICS Labour and Employment Ministers Declaration on Quality Jobs and Inclusive Employment Policies.[2] At the same time, the constant and coordinated actions of governments, representatives of employers and workers are important for ensuring social justice, especially in the context of the ongoing changes in the world of work caused by technological innovations. The ILO Centenary Declaration

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1 International Labour Office, *Women and Men in the Informal Economy: A Statistical Picture* 15 (3rd ed. 2018).

2 BRICS Labor and Employment Ministers, Declaration on Quality Jobs and Inclusive Employment Policies (Jan. 2, 2021), available at http://en.brics2015.ru/load/870097.

on the Future of Work, adopted on 21 June 2019 in Geneva during the 108th Session of the International Labour Conference, directs states to increase investment in the development of human competences, labour market institutions, and decent and stable employment.[3] The ILO considers innovations related to social insurance coverage for certain categories of workers in the BRICS countries (employees of private employment agencies, temporary workers, self-employed workers) to be the most important. In China, the employment agency is required to inform the agency worker on the content of its agreement with the user firm, including such aspects as the period of the contract, the remuneration and social insurance premiums. In India, Worker Welfare Funds, managed by tripartite Worker Welfare Boards, provide workers with old-age pensions, employment injury protection as well as health insurance and maternity benefits for women. Social insurance in Brazil covers self-employed workers (employers; "own-account" workers) and micro-enterprise workers for one or more branch offices. They may be integrated into existing social security schemes or participate in a new separate scheme. Universal social protection for future work requires closing the gaps in coverage and adapting to new forms of employment in order to ensure the universality of the human right to social security. In particular, the measures pursued by the policy should be aimed at eliminating or reducing the thresholds in relation to the minimum earnings, working hours and the duration of employment; increasing system flexibility with respect to interrupted contribution periods; enhancing the portability of entitlements and ensuring effective minimum benefit levels in order to improve the coverage of non-standard and self-employed workers.

Paul Smit, Associate Professor of Labour Relations, School of Industrial Psychology and Human Resource Management at North-West University (South Africa), drew attention to the fact that the current legislation of South Africa does not provide a definition of employment or labour relations in his presentation entitled "Who Is an Employee? An Elusive Concept in South Africa." At the same time, the ILO Employment Relationship Recommendation, 2006, provides the obligation for member states to take into account the need to distinguish between wage workers and self-employed workers when implementing national policies.[4] Yet, South African labour legislation does not contain the necessary protection measures for self-employed individuals and independent contractors. Only employees can refer disputes of unfair dismissal or unfair labour practices to the Labour Court or the Commission for Conciliation,

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[3] International Labour Conference, ILO Centenary Declaration for the Future of Work, adopted by the Conference at its One Hundred and Eighth Session, Geneva, 21 June 2019 (Jan. 2, 2021), available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711674.pdf.

[4] International Labour Organization, Employment Relationship Recommendation, 2006 (No. 198) (Jan. 2, 2021), available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535.

Mediation and Arbitration, which is the dispute resolution body in South Africa. Moreover, all fundamental labour rights enshrined in the Constitution of South Africa[5] and the Labour Relations Act, 1995 (LRA),[6] belong only to employees. In this connection, it is extremely important to determine the employment status of individuals. Therefore, different tests have been developed to determine the actual employment status of individuals: the control test, the organization test and the dominant impression test. South African legislators decided to consolidate a comprehensive definition of just who an employee is, taking into account the fact that none of these tests could be applied in a modern workplace. Thus, in accordance with Section 213 of the LRA, an employee in South Africa is:

- Any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration;
- Any other person who in any manner assists in carrying on or conducting the business of an employer, and the terms "employed" and "employment" have meanings corresponding to that of "employee."

However, even this definition led to different interpretations and was expanded in subsequent amendments to the LRA, as well as in the Basic Conditions of Employment Act 1997[7] and the Employment Equity Act 1998,[8] according to which a person is considered an employee subject to one or more of the following conditions:

- The manner in which the person works is subject to the control or direction of another person.
- The person's hours of work are subject to the control or direction of another person.
- In the case of a person who works for an organization, the person forms part of that organization.
- The person has worked for that other person for an average of at least 40 hours per month over the last three months.
- The person is economically dependent on the other person for whom he or she works or renders services.

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[5] Constitution of the Republic of South Africa, sec. 23 (Jan. 2, 2021), available at https://www.gov.za/documents/constitution-republic-south-africa-1996.

[6] Labour Relations Act, 1995 (Jan. 2, 2021), available at https://www.gov.za/sites/default/files/gcis_document/201409/act66-1995labourrelations.pdf.

[7] Basic Conditions of Employment Act 1997, Republic of South Africa Government Gazette 1997, Vol. 390, No. 18491.

[8] Employment Equity Act 1998, Republic of South Africa Government Gazette 1998, Vol. 400, No. 19370.

• The person is provided with the trade tools or work equipment by the other person.

• The person works for or renders services to one person.

Associate Professor Smit pointed out that South African labour law makes no distinction between full-time employees, part-time employees, casual workers, foreign workers, level of seniority, male/female, etc. Additionally, when it is established that someone is an employee, then rights on all protection mechanisms in terms of all labour legislation are conferred on that person, thereby ensuring equal protection for vulnerable workers.

Olga Chesalina, Senior Researcher at the Max Planck Institute for Social Law and Social Policy (Germany), spoke on the topic "Platform Work in Russia and in EU Countries: A Comparative Study." She noted that work via Internet platforms is seen as a non-standard form of employment, in which at least three entities participate: an Internet platform, a customer and an executor. From a legal point of view, it is important to distinguish two main types of digital platform work: crowdwork and work-on-demand via apps. Crowdwork is organized using Internet platforms where internal tasks are addressed to an indefinite number of organizations, as well as individuals, regardless of their territorial distance. Moreover, all work or its results are transmitted via information and telecommunications networks, including the Internet. Work-on-demand via apps involves the implementation of both traditional services – for example, transportation services, cleaning and courier work – and highly qualified services – for example, lawyer services offered to an indefinite number of individuals, limited geographically and performed in the "real world". The emergence of work on the basis of Internet platforms is, on the one hand, the quintessence of certain trends in the labour market: triangular labour relations; transfer of economic risks from the employer to the employee; fragmentation of labour; increase in the number of self-employed, non-standard labour relations and informal employment. On the other hand, the model of work via Internet platforms became possible only due to the development of information technologies. Moreover, platform providers have begun to use completely new algorithms for the algorithmic control/management of labour processes. In Senior Researcher Chesalina's opinion, in the case of working via platforms, the algorithmic control in conjunction with the organizational management of the platform providers has completely replaced the usual signs of independent labour and the disciplinary measures applied within the framework of the labour relationship, as well as the classic forms of encouragement. An analysis of the law enforcement practices of different countries indicates that work via Internet platforms is usually regarded as independent work. Moreover, a single judicial practice on this issue has not yet been developed. There are judicial decisions recognizing employees via online platforms as employees and judicial decisions recognizing such individuals as self-employed.

Summing up, Senior Researcher Chesalina emphasized that modern information technologies have not only contributed to the emergence of new atypical forms of employment and the spread of informal employment, but also complicated the distinction between labour relations and civil law due to the emergence of new ways of exercising employer powers (algorithmic control) and the distribution of employer responsibilities among several persons.

Mauro Maia Laruccia, Adjunct Professor at the Pontifical Catholic University of São Paulo and Business Faculty of Campos Salles Integrated Faculties (Brazil), and **Dalton Tria Cusciano**, Adjunct Professor at the Getulio Vargas Foundation and Business and Insurance School (Brazil), presented a study on "Labour Relations in the BRICS Countries in the Conditions of Precarization of Employment: Brazilian Case." In Brazil, the Consolidation of Labour Laws,[9] which has been in force since 1 May 1943 in accordance with Decree Law No. 5.452, is the main legislative act of labour law in the private sector and, together with the Constitution of Brazil,[10] lays down rules on a number of labour provisions, including labour contracts. Full-time employment without contract term limitations are registered by the employer in the employee Work and Social Security Card (CTPS) system, allowing the worker to do his job only using one's own resources, providing the service without the possibility to replace himself with another person. Considering that the labour contract is concluded personally, and the work should be provided continuously, in contrast to the casual work performed by non-staff employees, a characteristic feature of the labour contract is legal submission and one-sidedness, manifested in the payment received by the employee as a result of the work performed under the labour contract. The economic crisis of 2014–2017, accompanied by a sharp decline in 2015–2016 and an increase in unemployment to 12.1%, necessitated the updating of Brazilian labour law. Adjunct Professors Laruccia and Tria Cusciano explained that on 11 November 2019 the Brazilian government launched Green and Yellow Employment Contracts to create job vacancies for young people between 18 and 29 years old, without previous job registration in CTPS, but with some decrease in labour rights. In general, atypical labour contracts may be classified as fixed-term employment contracts, temporary contracts, daily employment, part-time work, intermittent employment contracts and labour contracts. In accordance with the Consolidation of Labour Laws, fixed-term employment contracts are only allowed for up to 2 years or for 45 days with the possibility to extend them once for an equal period of time, totalling 90 days for the probation employment period.[11] In case of early termination of the

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9 Consolidação das Leis do Trabalho [CLT] [the Consolidation of Labour Laws] (Port.) (Jan. 2, 2021), available at http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm.

10 Constitution of the Federative Republic of Brazil (Jan. 2, 2021), available at http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/legislacao/legislacao-em-ingles/constitution-of-the-federative-republic-of-brazil.

11 CLT Art. 445.

contract for a fixed term without cause for dismissal, the employer is obliged to pay the employee half salary for the remaining period, and the employee will have the right to access unemployment insurance. Thus, as of November 2019, the ongoing reforms have created 1.124 million official jobs in Brazil.

Syed Ali Wasif, Professor of International Law at Tyumen State University (Russia), in his presentation "Norms on the Responsibilities of Transnational Corporations Regarding Human Rights," noted that the United Nations encourage states to develop, implement and improve National Action Plans (NAPs) as part of their commitment to disseminate and accomplish the Guiding Principles on Business in the Human Rights (UNGPs).[12] NAPs cover 41 issues, in particular, the rights of workers, equality and non-discrimination, freedom of association, forced labour and modern slavery, the rights of migrant workers and financial development institutions, among others. Presenting the results of the study of NAPs for individual states, Professor Ali Wasif stressed that the Belgian NAP contains a direct indication that,

> The action plan and basic mapping specifically concern the first and third pillars of United Nations Guiding Principles on Business and Human rights, namely: the obligation of the state to protect people when third parties, including companies, violate human rights and the need to ensure that victims of human rights violations have access effective remedies.[13]

By committing to implementing international human rights standards at all levels, Chile has adopted its NAP with the main goal of promoting a culture of respect for human rights in corporate activities aimed at preventing the negative consequences of human rights violations.[14] The process of implementing the USA's NAP on Responsible Business Conduct involves more than 15 institutions, including the Department of Commerce, Department of Homeland Security, Department of Defense, Department of Justice, Department of Labor, Department of State, Department of the Treasury, Department of Agriculture and others. The U.S. NAP lacks a basis for monitoring or reporting, although in the introduction to its NAP the U.S. government states that it is "another example of an open dialogue through which the U.S. government will continue to communicate, coordinate, and assess its actions."[15] Professor Ali Wasif

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[12] United Nations Human Rights Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011).

[13] Plan d'action national Entreprises et Droits de l'Homme, at 11 (Jan. 2, 2021), available at https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/begium-nap-french.pdf.

[14] National Action Plan on Business and Human Rights Chile, at 13 (Jan. 2, 2021), available at https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/national-action-plan-on-business-and-human-rights_.pdf.

[15] Responsible Business Conduct: First National Action Plan for the United States of America, 16 December 2016, at 6 (Jan. 2, 2021), available at https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/10/NAP-USA.pdf.

noted, however, that the NAP under the Executive Department or Agency section clearly indicates that the U.S. government agency is responsible for implementing each action item. Moreover, the NAP does not provide any structured framework, methodology or time frame for fulfilling the obligations undertaken, nor their monitoring and evaluation.

The second day of the Seminar was organized in the format of open lectures and public discussions.

Professor **Svetlana Golovina**, Head of the Labour Law Department at Ural State Law University (Russia), Honoured Lawyer of Russia, gave a presentation on the topic "Paradoxes of Litigation in Labour Disputes";

Paul Smit, Associate Professor of Labour Relations at the School of Industrial Psychology and Human Resource Management at North-West University (South Africa), devoted his lecture to "Labor Relations in South Africa in the Conditions of Precarization of Employment";

Professor **Elena Machulskaya** delivered a talk on "Nonstandard Employment Relations – New Challenges for Social Security";

Elena Sychenko, PhD, Associate Professor in the Labour and Social Law Department at Saint Petersburg State University (Russia), discussed the study "Protecting Employees from Psychological Harassment at Work";

Konstantin Dobromyslov, Associate Professor in the Labour and Social Policy Department at the Russian Presidential Academy of National Economy and Public Administration, gave a presentation on "Development of the Pension System in Russia."

Summing up the results of the Seminar, the participants noted that the issues examined during the collective discussions have clear relevance and importance for the agenda of the BRICS member states, and all of the participants expressed their general interest in expanding academic cooperation.

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