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News

Hungary's government unveils a new austerity package intended to restore the nation's fiscal balance. The "Program of New Stability" calls for steps to reduce public expenditures and various measures that would raise tax revenues. (Page 4)

The Czech Republic's new Insolvency Act, which will replace the much-criticized Act on Bankruptcy and Composition currently in effect, will improve the position of creditors and introduce reorganization as a preferred method of resolution. The new legislation will enter into effect on July 1, 2007. (Page 7)

The EBRD will shift its lending and investment priorities to Russia, the countries of Southeastern Europe, the Caucasus region, and Central Asia and away from the "advanced transition" economies of Central and Eastern Europe, under its new five-year strategy. The multilateral bank also announces a three-year, EUR1.5 billion initiative to promote sustainable energy in the former Soviet bloc. (Page 26)

Latvian financial institutions are subject to tough new requirements to prevent money laundering and terrorism financing, under new regulations issued by the Financial and Capital Market Commission. (Page 11)

Montenegro breaks away from Serbia and the former "state union" of Serbia and Montenegro, following a referendum on independence approved by more than 55 percent of Montenegrin voters. The former Yugoslav republic promptly applies to join various multilateral organizations on its own. (Page 16)

Italian energy group Enel agrees to pay EUR820 million for a 67.5 percent interest in Romania's Electrica Muntenia Sud, an electricity company that distributes power in and around the country's capital, Bucharest. (Page 27)

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Special Report

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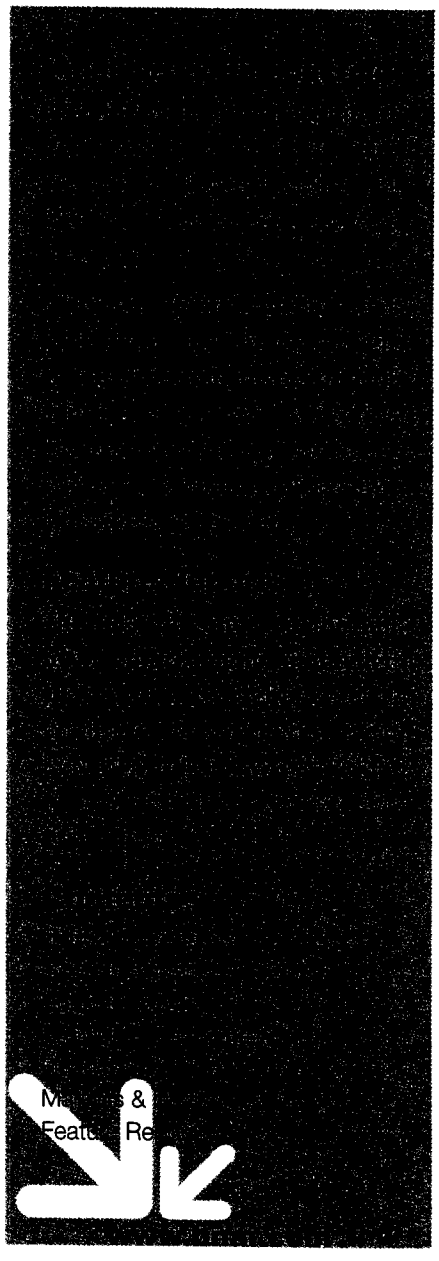

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Special Report

The Legal Regulation Of Strikes In Russia

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Readers are cautioned that this Special Report is intended for information purposes only, and that if legal advice is required, a lawyer should be consulted.

Introduction

When choosing a country in which to invest in a sector that uses a significant number of local employees, a foreign investor should always pay close attention to the issue of the legal regulation of strikes, since to ignore it or to be ill-informed about the relevant law could have highly undesirable consequences. The recent strike at the Ford assembly plant in Leningrad Oblast demonstrates dramatically that foreign investors — even those that establish a wholly owned production facility in Russia — must carefully consider labour relations in general and the right to strike in particular. It hardly need be said that a strike can bring the results of many months of successful and profitable work to naught, despite years of previous success. Moreover, cultural differences, differences in corporate culture and in-house management styles, and, in particular, different mentalities (as a famous poet once said, Russia is not to be understood by the intellect!) make companies belonging to foreign investors inherently prone to collective labour conflicts.

This Special Report examines the issues surrounding the right to strike and the procedure by which such right may be exercised in the Russian Federation. Since any strike inevitably entails a wasteful use of resources as well as financial losses for the employer and employees alike[1], if, for whatever reason, a strike nonetheless takes place, sound knowledge of the relevant law will make it possible to avoid even greater losses by enabling the swiftest possible settlement of the dispute within the bounds of the procedure established by law.

Applicable Law

The right to strike and the procedure for exercising such right in the Russian Federation are governed by six basic normative acts:

- the Constitution of the Russian Federation of December 12, 1993 (the "Constitution")[2];
- the Labour Code of the Russian Federation of December 30, 2001, as amended (the "Labour Code")[3], in particular, Chapter 61 "Consideration of collective labour disputes";
- Federal Law No. 175-FZ "On the procedure for settling collective labour disputes" of November 23, 1995, as amended ("Law No. 175-FZ")[4];
- Order No. 57 of the Ministry of Labour and Social Development of the Russian Federation "On the approval of the Recommendations on organising the work for consideration of collective labour disputes by a conciliatory commission" of August 14, 2002[5];
- Order No. 58 of the Ministry of Labour and Social Development of the Russian Federation "On the approval of the Recommendations on organising the work for consideration of collective labour disputes with the participation of a mediator" of August 14, 2002[6]; and
- Order No. 59 of the Ministry of Labour and Social Development of the Russian Federation "On the approval of the Recommendations on organising the work for examination of collective labour disputes by a labour arbitration tribunal" of August 14, 2002[7].

Taking into consideration that the provisions of Chapter 61 of the Labour Code almost literally reproduced those of Law No. 175-FZ, the earlier court cases decided on the basis of this Law could be considered as relevant for the purposes of the interpretation of the provisions of the Code, although, as a general rule, Law No. 175-FZ shall apply to the extent it does not contradict the Labour Code.

What Is A Strike And How Does It Differ From Other Forms Of Collective Action Taken By Employees?

A strike is defined in Article 398, Part 4 of the Labour Code and in Article 2(6) of Law No. 175-FZ as a temporary voluntary refusal by employees to fulfil their labour obligations (in full or in part) with the aim of settling a collective labour dispute. In turn, a collective labour dispute, according to Part 1 of Article 398 of the Labour Code, is an unsettled disagreement between employees (their representatives) and employers (their representatives) in connection with the determination or amendment of working conditions (including wages), the conclusion, amendment and performance of collective contracts as well as in connection with the refusal of the employer to take into account the opinion of an elected representative body of employees in the process of adoption in the organisations of acts containing labour law provisions.

A comparison of these definitions enables us to determine the characteristic signs of a strike according to Russian law, to wit:

- collective and concerted nature of employees' actions;
- a complete or partial refusal to fulfil labour obligations; and
- intention to settle a collective labour dispute which has arisen between the parties.

Evidence of such signs makes it possible to distinguish a strike from any other form of collective action taken by employees which, notwithstanding certain superficial similarities to a strike, do not constitute strikes under the Labour Code and Law No. 175-FZ.

Firstly, such collective action by employees as "work-to-rule", when employees begin to observe the established regulations of a production process to the letter with the same economic consequences for the employer as a complete or partial cessation of work[8], will not be considered a strike because it does not entail a complete or partial refusal to fulfil labour obligations.

Secondly, complete or partial refusal by employees to fulfil labour obligations in connection with long-term non-payment of wages will not be considered a strike, if the sole request made by such employees is for settlement of unpaid wages. This is related to the fact that the right to wages is the individual right of each employee and, pursuant to Article 1(3) of Law No. 175-FZ, the settlement of collective labour disputes arising in conjunction with the collective defence of the individual labour rights of employees is not a subject of this Law. Accordingly, in the event of non-payment of wages, employees are generally entitled to cease working until the complete repayment of wage arrears (Article 142 of the Labour Code). Since such a cessation of work will not be regarded as a strike, no preliminary observation of any conciliation procedure whatsoever is required, except for respective written notice to the employer.

An indefinite strike was launched on August 15, 1997, by decision of a staff conference of the heating networks production company "Yakutskteploset" in connection with long-term non-payment of wages. The company administration filed a suit in court for the strike to be declared illegal, citing a breach by company employees of the procedure for settling collective labour disputes provided by Law No. 175-FZ. The suit filed by the company administration was satisfied by a decision of the Civil Chamber of the Supreme Court of the Republic of Sakha (Yakutia) on August 26, 1997. When examining the case in appeal proceedings, the Civil Chamber of the Supreme Court of the Russian Federation overruled the court decision and delivered a new decision refusing satisfaction of the company administration's suit to declare the strike illegal. In particular, the Civil Chamber of the Supreme Court of the Russian Federation pointed out that the decision of the lower court which declared the employees' strike illegal meant that the employees would be obliged to resume the performance of their labour obligations while the reason for their refusal to fulfil such obligations, *i.e.*, non-payment of wages, remained unremedied by the company administration. Such a decision cannot be deemed lawful, since a request to perform work without any corresponding payment represents forced labour under Article 37(2) of the Constitution and Article 2 of the Labour Code of the Russian Federation of 1971[9].

Thirdly, so-called solidarity strikes, when work is partially or completely ceased as a sign of solidarity with other striking workers, will not be considered strikes under the Labour Code and Law No. 175-FZ in view of the absence of any collective labour dispute between these employees and their employer. Hence, the vessel boycott carried out by port workers within the framework of the International Transport Workers Federation (ITF) boycott of vessels sailing under the "Flags of Convenience"[10] would not be considered a strike under Russian law.

Finally, purely political strikes do not constitute strikes under the Labour Code and Law No. 175-FZ, since in this particular instance too there is no collective labour dispute. Accordingly, partial or complete cessation of work in conjunction with participation by employees in solidarity strikes and political strikes may be considered a breach of labour discipline, which will entail disciplinary penalties, possibly even as severe as dismissal.

Who Has The Right To Strike?

Article 37, Part 4, of the Constitution guarantees employees and the collectives of workers to which they belong the right to individual and collective labour disputes, including the right to strike. However, as was noted by the Supreme Court of the Russian Federation, the exercise of the right to strike should not violate the rights and freedoms of others and may be restricted by federal law, but only to the extent to which it is necessary for the purposes of protecting the fundamental principles of the constitutional system, morals, health, rights and the legal interests of other persons, or ensuring the defence of the country and the security of the state (Article 17, Part 3, and Article 55, Part 3, of the Constitution). On the basis of this, the Supreme Court stated that when deciding whether a strike is illegal, judges should bear in mind that in such instances a restriction of the right to strike can only be applied to such categories of workers with respect to which, in view of the nature of their duties and the possible consequences of their ceasing to work, the need to prohibit the holding of a strike arises directly from the aforementioned provisions of the Constitution. Restricting the right to strike of a large number of workers to hold a strike which is necessary in order to achieve the goals listed in Article 17, Part 3, and Article 55, Part 3, of the Constitution is illegal[11].

Article 413, Part 1, of the Labour Code states that, in accordance with Article 55 of the Constitution, the following strikes are illegal and are not allowed:

- during periods of state of war or state of emergency or special measures in accordance with the legislation on the state of emergency; in the bodies and organisations of the military forces of the Russian Federation, other military, militarised and other units and organisations responsible for the matters of ensuring the defence of the country, security of the state, rescue, search and rescue, and fire prevention, prevention or liquidation of natural disasters and emergency situations; in the law enforcement bodies; in the organisations directly servicing especially dangerous types of production or equipment; in the stations of emergency medical assistance; and
- in organisations related to ensuring the life of the population (energy supply, heating, heat supply, water supply, gas supply, air transport, railway transport and water transport, communications, hospitals), in cases when the conduct of a strike creates a threat to the defence of the country and security of the state, lives and health of people[12].

Furthermore, in accordance with Article 413, Part 2, of the Labour Code, the right to strike could be restricted by federal law. Such restrictions are imposed by Article 17(2) of the Federal Law "On federal railway transport"[13] stating that cessation of work in order to resolve collective labour disputes on the railways is not permitted[14]. Nonetheless, in the light of the privatisation and reorganisation of a number of railway enterprises, potential investors should bear in mind that, in the event if a dispute concerning the constitutionality of these provisions, considering the clarification given by the Supreme Court of the Russian Federation, and in light of Article 413, Part 1, of the Labour Code, such a wide-reaching prohibition on strikes in the railways transport as a whole will most likely be declared unconstitutional.

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Confirmation of the above is to be found in Order No. 5-P of the Constitutional Court of the Russian Federation of May 17, 1995, on the case concerning an examination of the constitutionality of Article 12, Part 1, of the USSR Law "On the procedure for settling collective labour disputes (conflicts)", which does not permit cessation of work in order to settle collective labour disputes (conflicts) in civil aviation companies and organisations. The Constitutional Court found that the prohibition of strikes in civil aviation companies and organisations established by this provision of the USSR Law "On the procedure for settling collective labour disputes (conflicts)" on the sole grounds that they belong to a particular sector of economy is a contradiction to Article 37, Part 4, and Article 55, Parts 2 and 3, of the Constitution[15].

The possibility of establishing voluntary restrictions on the exercise of the right to strike is provided by Article 13, Part 2, of the Russian Federation Law on Collective Contracts and Agreements[16], which directly permits a collective contract to include certain reciprocal obligations of an employer and its employees with respect to the waiver of the right to strike on the conditions included in the collective contract in question *upon the full and timely fulfilment of such conditions* (emphasis added). Article 41 of the Labour Code also sets forth that a collective contract may provide for the employees' waiver of the right to strike subject to compliance with the relevant terms and conditions of the collective contract.

Nonetheless, since the definition of a collective labour dispute given in Article 398 of the Labour Code and in Article 2(1) of Law No. 175-FZ encompasses unsettled disagreements on the performance of collective contracts, disagreements between employees and employers about whether "full and timely fulfilment" took place constitute a collective labour dispute, which entails the right to declare a strike[17]. Accordingly, the inclusion of a provision on the inadmissibility of strikes in a collective contract is primarily a declaratory gesture and is unlikely to be of any practical value whatsoever to an employer.

When Does The Right To Declare A Strike Arise?

As follows from Article 409, Part 2, of the Labour Code and Article 13(1) of Law No. 175-FZ, the right to declare a strike arises if conciliation has not resulted in the settlement of a collective labour dispute, or the employer evades conciliation or fails to perform the agreement reached during the settlement of a collective labour dispute. Accordingly, being able to establish correctly when a collective labour dispute began and whether conciliation procedures were observed becomes a matter of the utmost importance during the subsequent decision on the legality of a strike.

Thus, according to Article 398, Part 3, of the Labour Code, the commencement of a collective labour dispute is the day on which the employer's decision to refuse all or part of the employees' claims is announced, or the employer fails to announce its decision pursuant to Article 400 of the Labour Code, or the day on which a protocol of disagreements in the course of collective negotiations is drawn up.

In accordance with Article 399, Part 1, of the Labour Code and Article 3(1) of Law No. 175-FZ, the right to submit claims belongs to employees and their representatives. Claims shall be made in writing and shall be submitted to the employer, who under Article 400 of the Labour Code is obliged to consider them and inform the employees' representative of his decision in writing within three business days of receipt of the claims.

The claims of trade unions and their federations in accordance with Article 399, Part 6, of the Labour Code shall be submitted and sent to the respective parties of the social dialogue. The representatives of employers (employers' associations) shall take the claims of trade unions (their federations) and inform the trade unions (their federations) of their decision within one month of receipt of the claim.

The conciliation procedures provided by Article 401, Part 1, of the Labour Code and Article 5(1) of Law No. 175-FZ consist of:

1) examination of the collective labour dispute by a conciliation board (Article 402 of the Labour Code; Article 6 of the Law No. 175-FZ);

2) examination of the collective labour dispute with the participation of a mediator (Article 403 of the Labour Code; Article 7 of Law No. 175-FZ); and (or)

3) examination of the collective labour dispute by a labour arbitration tribunal (Article 404 of the Labour Code; Article 8 of Law No. 175-FZ).

A conciliation board is established in a period of up to three business days from the commencement of a collective labour dispute, and is set up in accordance with the appropriate order from the employer and the decision of the employees' representative. It is made up of equal numbers of representatives of the parties. The decision of the board is adopted by agreement between the parties, registered by a protocol, is binding on the parties and is performed in the manner and within the terms stipulated in the decision. If the conciliation board does not reach an agreement, the parties continue conciliation with the participation of a mediator and/or before a labour arbitration tribunal.

The examination of a collective labour dispute with the participation of a mediator invited by mutual agreement of the parties is carried out within a term of seven calendar days from the date on which said mediator is invited (or recommended by the Collective Labour Relations Service, in the event that the parties are unable to agree on a suitable candidate), and the final decision is adopted in writing, or a protocol of disagreement is drawn up.

A labour arbitration tribunal constitutes a temporary body for the examination of a collective labour dispute, created by the parties thereto and the Collective Labour Relations Service within a term of no more than three business days after consideration of a collective labour dispute has been completed by a conciliation board or mediator. The labour arbitration tribunal is formed by mutual agreement of the parties. The collective labour dispute is examined by the labour arbitration tribunal with the participation of representatives of the parties within a term of up to five business days of the date on which the tribunal was established. The labour arbitration tribunal's recommendations for settlement of the collective labour dispute are delivered to the parties in writing and are binding on the parties, if the parties have entered into a written agreement on the performance of such recommendations.

The agreement reached by the parties during the settlement of a collective labour dispute is registered in writing pursuant to Article 408 of the Labour Code and Article 12 of Law No. 175-FZ and is binding on the parties. Performance of the agreement is monitored by the parties to the collective labour dispute.

The Procedure For Declaring A Strike

Pursuant to Article 410, Part 1, of the Labour Code, the decision to declare a strike is adopted by a staff meeting (conference) within an organisation (branch, representative office, other separate unit) on the basis of the proposal of the representative body of workers previously authorised by workers to participate in the resolution of the collective labour dispute. The decision to declare a strike taken by the trade union (federation of trade unions) shall be approved for each organisation by the meeting (conference) of workers of this organisation. According to Article 410, Part 2, of the Labour Code, such a meeting (conference) of workers is deemed duly authorised if it is attended by no less than two-thirds of the total number of employees (conference delegates). A decision is considered to have been adopted if no less than one-half of those present at the meeting (conference) have voted on it. In case it is impossible to conduct a meeting (conference) of workers, their representative body has the right to approve its decision by collecting the signatures of more than one-half of the workers in support of the strike.

After the conciliation board has been in operation for five calendar days, a one-hour preliminary strike may be declared, of which the employer must be given a minimum of three business days' advance warning. During a preliminary strike, the body leading such action shall ensure that a minimum service is provided in accordance with Article 412 of the Labour Code.

The employer must be warned of an impending strike in writing no less than 10 calendar days in advance. According to Article 410, Part 8, of the Labour Code and Article 14, Part 4, of Law No. 175-FZ, the decision to declare a strike must include the following:

- a list of the differences of opinion between the parties which have given rise to the declaration and holding of a strike;
- the date and time at which the strike will start, its duration, and the number of participants predicted;
- the name of the body which is leading the strike, and the names of the employees' representatives who are authorised to participate in the conciliation procedures; and
- proposals for the minimum service to be provided by the organisation, branch or representative office during the strike.

Pursuant to Article 411, Part 1, of the Labour Code, a strike shall be led by a representative body of workers.

Obligations Of The Parties During A Strike

Article 412, Parts 1 and 2, of the Labour Code and Article 16 of Law No. 175-FZ state that the parties shall be obliged to continue settling a collective labour dispute during a strike by conducting conciliation, and must take all steps within their power to ensure public order and the security of the property of the organisation, branch, representative office and natural persons during the strike, as well as the running of machines and equipment which could present a direct threat to human lives and health if turned off.

Furthermore, in organisations, branches and representative offices whose work is connected with public safety and health and vital social interests, a minimum service must be ensured during a strike as determined by agreement between the parties together with the local government body no later than five days after the decision to declare a strike has been adopted. It is prohibited to include in the minimum service the works and services not included in the lists of necessary works (services). Such lists, in accordance with Article 412, Part 4, of the Labour Code, shall be approved by the body of executive power of the constituent territory of the Russian Federation in coordination with territorial federations of organisations of trade unions (trade union federations) on the basis of the respective lists approved on the federal level.

In the event that an agreement is not reached, the minimum service is determined by the body of executive power of the constituent territory of the Russian Federation. Such decision could be challenged by the parties of the collective labour dispute in court. If a minimum service is not provided, the strike may be declared illegal, as directly stated in Article 412, Part 8, of the Labour Code and in Article 10(4) of Law No. 175-FZ.

Illegal Strikes

In addition to the grounds of illegality of strike listed in Article 413, Part 1, of the Labour Code, in accordance with Article 413, Part 3, a strike shall also be illegal if it was declared without due consideration for the terms, procedures and requirements set forth by the Labour Code.

An analysis of judicial practice shows that the most common grounds on which strikes are declared illegal are the fact that the employer has not sought to evade conciliation, and failure to observe the stipulated terms and procedures for determining the minimum service. Thus, on November 4, 1997, the 15th extraordinary conference of the Sheremetievo flight personnel trade union adopted a decision to hold a strike on December 12, 1997, at the same time declaring that the administration of OAO Aeroflot-Russian International Airlines was refusing to sign a collective agreement. However, the case record shows that, at the time at which the strike was declared, the administration could not have signed the collective agreement since the necessary appendices thereto had not been submitted. The administration did not evade conciliation procedures, and negotiations for the conclusion of a collective agreement with the Sheremetievo flight personnel trade union were sustained. Moreover, in breach of the provisions of Article 16(3) of Law No. 175-FZ, the minimum service was not determined until December 3, 1997, and then only by the strike committee of the Sheremetievo flight personnel trade union and the prefecture of the Northern Administrative District of Moscow without the participation of the administration of OAO Aeroflot-Russian International Airlines (the other party to the collective labour dispute). Under such circumstances, the Civil Chamber of the Supreme Court found the decision of the lower court declaring the strike illegal to be justified[18].

Pursuant to Article 413, Part 4, of the Labour Code and Article 17(5) of Law No. 175-FZ, a decision declaring a strike illegal may be adopted by the supreme courts of the republics, krai and oblast courts, courts of the cities of Moscow and Petersburg, the autonomous oblasts and the autonomous okrugs in response to a claim filed by an employer or a public prosecutor. The court decision is made known to the employees via the body leading the strike, which is obliged to inform participants in the strike of the court's decision immediately. When a court decision declaring a strike illegal enters into legal force, it is subject to immediate performance pursuant to Article 413, Part 6, of the Labour Code and Article 17(7) of Law No. 175-FZ. Employees are obliged to cease striking and return to work no later than one day after a

copy of the aforesaid decision has been delivered to the body leading the strike.

In the event that a strike action could pose a direct threat to the life and health of civilians, the court, in accordance with Part 7 of Article 413 of the Labour Code and Section 8 of Article 17 of Law No. 175-FZ, is entitled to postpone a proposed strike for a term of up to 30 days, or postpone a strike that is already underway for the same term. Furthermore, pursuant to Part 8 of Article 413 of the Labour Code, in cases which have a particular bearing upon certain vital interests of the Russian Federation or individual territories thereof, the Government of the Russian Federation is entitled to suspend a strike until the issue has been resolved by the appropriate court, but for no longer than 10 calendar days. Finally, in cases in which a strike cannot be held under Parts 1 and 2 of Article 413 of the Labour Code, in accordance with Part 9 of Article 413 of the Labour Code, a decision on a collective labour dispute shall be taken by the Government of the Russian Federation within a term of 10 days.

In its Ruling No. 93-G05-14 dated August 26, 2005, the Supreme Court of the Russian Federation stated that exercise of the constitutional right to strike is subject to compliance with a number of legal requirements, which must be considered when considering the issue of legality of the strike in court. Such requirements include, *inter alia*, procedures for adopting a decision to declare a strike and procedures for conducting conciliation.

Guarantees For Employees Participating In A Strike

According to Parts 1 and 2 of Article 414 of the Labour Code, participation in a strike by an employee cannot be viewed as a breach of labour discipline and a reason for dismissal, and disciplinary penalties cannot be applied, except for the cases of non-observance of the duty to stop the strike in accordance with Part 6 of Article 413 of the Labour Code. During a strike, the posts and positions of the employees participating in such strike shall be retained; however, pursuant to Part 4 of Article 414 of the Labour Code and Section 4 of Article 18 of Law No. 175-FZ, the employer is entitled not to pay salaries to employees for the duration of their participation in the strike, save for employees who are providing the minimum service. Pursuant to Part 6 of Article 414 of the Labour Code and Section 5 of Article 18 of Law No. 175-FZ, employees who are not participating in the strike but are unable to perform their job in full as a result of a strike action shall be paid in the manner and the amounts stipulated by the Labour Code. The employer is entitled to engage such employees in different tasks in the manner provided by the Labour Code.

Lockout

Article 415 of the Labour Code and Article 19 of Law No. 175-FZ directly prohibit lockouts, which are defined as the dismissal of employees at the employer's initiative in connection with a labour dispute and the declaration of a strike and the liquidation or restructuring of an organisation, branch or representative office, during the settlement of a collective labour dispute. Since these provisions refer to prohibiting the dismissal of employees, it may be concluded that, for the period of a strike, an employer is entitled to substitute the striking workers with other employees by entering into fixed-term labour agreements with the latter[19].

Liability Of The Parties

Representatives of the employer who refuse to accept employees' requests or participate in the conciliation procedure, including by refusing to provide premises for meetings (conferences) for the voicing of requests or otherwise hindering the holding of such meetings, shall be subject to disciplinary liability in accordance with the provisions of the Labour Code or to administrative liability in accordance with the legislation of the Russian Federation (administrative fine in the amount of up to 30 statutory minimum monthly wages)[20]. Those representatives of the employer who are guilty of non-performance of obligations under the agreement reached as a result of conciliation shall be subject to administrative liability (administrative fine in the amount of up to 40 statutory minimum monthly wages).

Employees who commence a strike action or fail to stop striking on the day after the body leading the strike has received an effective court decision declaring a strike illegal or declaring a delay or suspension of the strike may, according to Part 1 of Article 417 of the Labour Code, incur a disciplinary penalty for breach of labour discipline.

A representative body of workers which declares and does not stop a strike after it has been declared illegal, in accordance with Article 417, Part 2, of the Labour Code, shall be bound to indemnify the damages incurred as a result of the illegal strike at its own expense and in the amount fixed by a court.

International Law

Pursuant to Article 15(4) of the Constitution, the universally recognised principles and norms of international law and international agreements of the Russian Federation are a component part of the legal system. If rules are established by an international agreement of the Russian Federation other than those provided by law, the rules of the international agreement shall apply. In 1956, the Russian Federation ratified the International Labour Organisation (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Notwithstanding the fact that the right to strike is not directly stated in the text of the Convention, this right was implied as self-evident in the report that was prepared for the first discussion of Convention No. 87[21]. In the absence of an express provision on the right to strike in the basic texts, the ILO supervisory bodies, including the ILO Committee of Experts on the Application of Conventions and Recommendations[22], have had to determine the exact scope and meaning of the Conventions on this subject[23].

The provisions of the Labour Code dealing with the right to strike and, earlier, the provisions of Law No. 175-FZ over the last several years have been the subject of numerous comments of the ILO Committee of Experts[24]. In its most recent comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) by the Russian Federation, made in 2005, the Committee of Experts noted that the Labour Code was under review and expressed the hope that the drafted amendments

would take into account the Committee's previous request to modify a number of provisions of the Labour Code or other legislative texts so as to bring them into conformity with the Convention:

- Article 410 of the Labour Code (providing that a minimum of two-thirds of the total number of workers should be present at the meeting and that the decision to stage a strike should be taken by at least one-half of the number of delegates present), so as to lower the quorum for a strike ballot, which the Committee considered too high and likely to impede recourse to industrial action, particularly in large enterprises;
- Article 410 of the Labour Code, so as to repeal the obligation to indicate the duration of a strike;
- Article 412 of the Labour Code, so as to ensure that any disagreement concerning minimum services in organisations responsible for safety, health and life of the people and vital interests of the society, where the minimum services must be ensured during a strike, is settled by an independent body having the confidence of all parties to the dispute and not the executive body;
- Article 413 of the Labour Code, so as to ensure that when a strike is prohibited, any disagreement concerning a collective dispute is settled by an independent body and not by the government; and
- Article 11 of the Law on Fundamentals of State Employment[25] and the relevant provisions of the Federal Law "On federal railway transport", so as to ensure that railroad employees, as well as those engaged in the public service, who are not exercising authority in the name of the state, enjoy the right to strike[26].

From the practical standpoint, the conclusions reached by the ILO Committee of Experts on the non-conformity of a number of provisions of the Labour Code and other laws with the requirements of Convention No. 87 create for employers a significant risk that, in the event of a suit filed by employees against them, Russian courts may, in accordance with Article 15(4) of the Constitution, apply directly the provisions of international law (as interpreted by the ILO Committee of Experts), and not the provisions of Russian law, more favourable to the employers, even though so far these provisions have not been brought into conformity with Convention No. 87.

Conclusion

An analysis of the legislation of the Russian Federation governing the right to strike and the procedure for exercising this right demonstrates that, in general, Russia at present is an "employer-friendly jurisdiction". The numerous requirements set forth in the Labour Code, concerning the declaration of a strike and the course of action during a strike, could easily lead to a strike being held to be illegal on the basis of minor procedural issues[27].

Nevertheless, foreign investors planning to make long-term investments in labour-intensive sectors of the Russian economy should bear in mind that, in the foreseeable future, the legislation of the Russian Federation on the right to strike may be reviewed in the light of the ILO's recommendations in favour of making the aforementioned requirements less severe. Until such time as this happens, in order to prevent possible damage as a result of strikes, foreign investors need to become thoroughly acquainted with the procedure for declaring and holding strikes set forth in the relevant law, and also require reliable legal counsel, particularly in view of the absence of significant and uniform practice in terms of enforcement of Law No. 175-FZ and the Labour Code.

NOTES

1 See, for example, Lloyd G. Reynolds, Stanley H. Masters, Collette H. Moser. Labour Economics and Labour Relations. (11th ed. 1998). p. 494.

2 Rossiiskaya Gazeta, December 25, 1993, No. 197.

3 Sobr. Zakonod. RF, 2002, No. 1, Art. 3.

4 Sobr. Zakonod. RF, 1995, No. 48, Art. 4557.

5 Bulletin of the Ministry of Labour and Social Development, 2002, No. 8.

6 Bulletin of the Ministry of Labour and Social Development, 2002, No. 8.

7 Bulletin of the Ministry of Labour and Social Development, 2002, No. 8.

8 On the "work-to-rule" strikes, see, for example, Ben-Israel R. Introduction to Strikes and Lockouts: a Comparative Prospective. Strikes and Lockouts in Industrialised Market Economies. Bulletin of Comparative Labour Relations, 1994, No. 29, p. 11.

9 Section 28 of the Overview of Judicial Practice of the Supreme Court of the Russian Federation in the area of civil law for 1997. Bulletin of the Supreme Court of the Russian Federation, 1998, No. 8, 9, 10.

10 See, for example, International Transport Workers' Federation. Flags of Convenience: The ITF's Campaign. (International Transport Workers' Federation, 1993); Herbert R. Northrup and Richard L. Rowan. The International Transport Workers' Federation and Flag of Convenience Shipping. (1983); Iliana Christodoulou-Varotsi and Dmitri A. Pentsov, Labour Standards on Cypriot Ships: Myth and Reality, Vanderbilt Journal of Transnational Law. 2004, vol. 37, No. 3, pp. 647, 649-650, available at SSRN: *ssrn.com/abstract=617942.*

11 Point 12 of Resolution No. 8 of the Plenum of the Supreme Court of the Russian Federation of October 31, 1995. Bulletin of the Supreme Court of the Russian Federation, 1996, No. 2, p. 1.

12 The Supreme Court of the Russian Federation confirmed in its Ruling No. 58-G03-4 of March 14, 2003, that strikes in the companies/enterprises whose activity is required to ensure the life of the population (including heating, heat and water supply) are illegal and are not allowed if the strike threatens lives and health of people.

13 Federal Law No. 153-FZ "On federal railway transport" of August 25, 1995, as amended (Sobr. Zakonod. RF, 1995, No. 21, Art. 3505) was rescinded by Federal Law No. 17-FZ "On railway transport in the Russian Federation" of January 10, 2003, except for provisions of Article 17.

14 Article 17 of Federal Law No. 153-FZ "On federal railway transport" shall apply until a special federal law enters into force to determine the list of jobs of railway transport workers not entitled to hold a strike.

15 Sobr. Zakonod. RF, 1995, No. 21, Arts. 3948-3951.

16 Law No. 2490-I "On collective contracts and agreements" of March 11, 1992, as amended. Vedomosti S'ezda Narodnykh Deputatov RF i Verkhovnogo Soveta RF, 1992, No. 17, Art. 890; Sobr. Zakonod. RF, 1995, No. 48, Art. 4558.

17 Depending upon the aim of a collective labour dispute, it is common practice for such disputes to be divided into two categories, namely, disputes concerning the establishment of the provisions of a collective labour agreement, and disputes concerning the interpretation and application of existing rights. See, for example, A.J.M. Jacobs. The Law of Strikes and Lockouts. In: Comparative Labour Law and Industrial Relations in Industrialised Market Economies. (Kluwer Law International, 1998). pp. 470-471. At the same time, Law No. 175-FZ does not make any distinction between these two categories of disputes, setting forth a single procedure by which they shall be settled.

18 Section 4 of the Overview of Judicial Practice of the Supreme Court of the Russian Federation in the area of civil law, 1998. Bulletin of the Supreme Court of the Russian Federation, 1999, No. 8, p. 17; No. 9, p. 18; No. 10, p. 15; No. 11, p. 20; No. 12, p. 4; 2000, No. 1, p. 17.

19 See also, A.M. Lushnikov and M.V. Lushnikova, Pravo na zabastovku instoriko-pravovoe esse [The Right to Strike: An Historical-Legal Essay] 5 Pravovedenie 51, 67 (2005).

20 Currently, the minimum monthly wage in the Russian Federation used for the calculation of fines is 100 Roubles, which is roughly equivalent to U.S.$3.50. See Federal Law No. 82-FZ "On Minimum Monthly Wage" of June 19, 2000, as amended; Sobr. Zakond. RF, 2000, No. 26, Art. 2729.

21 International Labour Conference, 81st Session, 1994: Freedom of Association and Collective Bargaining. General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948 and the Right to Organise and Collective Bargaining Convention (No. 98), 1949. Report III (Part 4B). ILO, Geneva, 1994. p. 62 (sec. 142).

22 The Committee of Experts on the Application of Conventions and Recommendations is the main supervisory body of the International Labour Organisation. It is composed of 20 experts of recognised competence, completely independent of government and appointed in their personal capacity. The Committee meets once a year in November-December in Geneva. It makes its comments in the form of observations which are published or direct requests which are sent directly to the respective government. See, Valticos N., von Potobsky G. International Labour Law, 284-286 (2nd ed. 1995).

23 International Labour Conference, 81st Session, 1994: Freedom of Association and Collective Bargaining. General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948 and the Right to Organise and Collective Bargaining Convention (No. 98), 1949. Report III (Part 4B). ILO, Geneva, 1994. p. 64 (sec. 145).

24 See, *e.g.*, International Labour Conference, 89th Session, 2001: Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A). ILO, Geneva, 2001, pp. 308-309; International Labour Conference, 91st Session, 2003: Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A). ILO, Geneva, 2003, pp. 301-303; International Labour Conference, 93rd Session, 2005: Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A). ILO, Geneva, 2005, pp. 100-101; International Labour Conference, 95th Session, 2006: Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A). ILO, Geneva, 2006, p. 121.

25 The Law on Fundamentals of State Employment was rescinded by Federal Law No. 79-FZ "On State Public Service of the Russian Federation" of July 27, 2004, as amended. Article 17.1(15) of this Federal Law No. 79-FZ also states that civil officers are prohibited from ceasing performance of their duties in order to settle labour disputes.

26 International Labour Conference, 95th Session, 2006: Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A). ILO, Geneva, 2006, p. 121.

27 *Cf.*, International Labour Conference, 89th Session, 2001: Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A). ILO, Geneva, 2001, pp. 308-309.