DEVELOPMENT OF LABOR LAW IN THE EU AND EAEU: HOW COMPARABLE?

NIKITA LYUTOV,
Kutafin Moscow State Law University (Moscow, Russia)

SVETLANA GOLOVINA,
Ural State Law University (Yekaterinburg, Russia)

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As of 2015 Armenia, Belarus, Kazakhstan, Russia and (since May 2015) Kyrgyzstan have entered into the Eurasian Economic Union (EAEU) with the ambitious goal of ultimately transforming it into a "Eurasian Union" with a deeper confederative structure in the future. Parallels between this regional integration project and the European Union integration process are emerging. But there are also marked differences between them.

The article highlights those parallels and differences in order to assess the general prospects for harmonizing labor law among the member states and to clarify how much of the EU experience in the harmonization of labor law may be applicable to the Eurasian integration project.

The completely different roots and ways to harmonize the national labor law systems within the EU and the EAEU are also discussed in the article. The authors claim that the approaches to harmonizing labor law in the two regions are mirror images of each other. While the EU project attempts to provide at least a partial common legal framework for certain separate aspects of legal regulation of labor among the very diverse national labor law systems, the EAEU currently refuses even to address the harmonization of national labor laws. However, the national labor law systems of EAEU member states are already much more homogenous than in the EU. Therefore, labor law harmonization in the EAEU may develop as a consequence of its economic integration and single market.

Keywords: labor law; harmonization of law; Eurasian integration; Eurasian Economic Union; European Union.

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Introduction

The Treaty on the Eurasian Economic Union (EAEU Treaty) came into force on 1 January 2015.[1] At the beginning of 2015 it established a new regional international organization that includes Belarus, Kazakhstan, Russia, and Armenia. In May 2015 the Republic of Kyrgyzstan also joined the EAEU.[2] This new regional integration structure was created to replace its predecessor – the Eurasian Economic Community (EurAsEC) that has terminated its activity due to the establishment of the Eurasian Economic Union (EAEU).[3]

The EurAsEC was intended not only as a common economic area, but also as a platform to harmonize and unify the laws of its member states within the framework of its customs union.[4] In contrast, the EAEU specifies the areas for legal

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1 *See* Договор о Евразийском экономическом союзе (Астана, 29 мая 2014 г.) [Treaty on the Eurasian Economic Union (Astana, 29 May 2014)] (May 20, 2018), available at http://www.pravo.gov.ru.

2 The Republic of Kyrgyzstan signed the EAEU Treaty on 23 December 2014. Information is published on the Eurasian Economic Commission website (May 20, 2018), available at http://www.eurasiancommission.org/ru/nae/news/Pages/01-01-2015-1.aspx.

3 Договор о прекращении деятельности Евразийского экономического сообщества (Минск, 10 октября 2014 г.) [Agreement on the Termination of the Eurasian Economic Community (Minsk, 10 October 2014)] (May 20, 2018), available at http://www.pravo.gov.ru.

4 Article 2 of the Treaty on the Establishment of the Eurasian Economic Community (hereinafter the EurAsEC Treaty) included a proposal for creation of the customs union. Договор об учреждении Евразийского экономического сообщества (Астана, 10 октября 2000 г.) [Treaty on the Establishment of the Eurasian Economic Community (Astana, 10 October 2000)] (May 20, 2018), available at https://base.garant.ru/2561051/. Article 7 of the Treaty on Customs Union in turn is intended to finalize the harmonization of law among the member states. Договор о Таможенном союзе и Едином экономическом пространстве (Москва, 26 февраля 1999 г.) [Treaty on the Customs Union and Common Economic Space (Moscow, 26 February 1999)] (May 20, 2018), available at https://base.garant.ru/12118938/.

harmonization and unification[5] and does not mention labor law among them. The EAEU Treaty limits the coordination of labor law systems of its member states to the free movement of labor,[6] cooperation on the issues of labor migration,[7] and basic labor rights[8] of workers.[9] This limitation of the integration process brings the EAEU project closer to the goals of European Union labor law integration than to the previous attempts at integration by post-Soviet countries.

Despite the fact that EAEU member state leaders have declared several times that the new integration structure is aimed only at economic but not political integration,[10] the association of the EAEU with another regional integration project, namely the European Union, is obvious. Even the name of the EAEU clearly resembles the EU.

However, this resemblance may be misleading. The very origins, philosophy, trends in development, and even the flaws in labor law within the two regional integration structures are quite different. In our article we will try to judge how comparable the two regional integration projects are and whether it is possible for EAEU labor law to learn some lessons (both positive and negative) from the more mature EU project.

There are also reasons to expect that the logic of economic integration will dictate the need to harmonize labor law of EAEU member states in the future. If this hypothesis is right, the EU experience of integration in the field of labor law may become more relevant for the EAEU.

In order to reach our goal we start the comparison of the EU and EAEU with a short overview of the different starting points in labor regulation (Section 1). This Section shows that regional integration in the EU and EAEU has started from opposite directions: in the EU independent countries with very different legal and political backgrounds have been slowly creating a single market and supranational legislation. In the EAEU, on the contrary, the former parts of the USSR came to

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5 The *harmonization* of law is defined in Art. 2 of the EurAsEC Treaty as convergence of member states' law which is to establish matching (comparable) normative legal regulation in separate areas; while the *unification* of law is understood there as convergence of the member states' law which is to establish identical mechanisms of normative legal regulation in separate areas defined in the EAEC Treaty. Hereinafter translation of laws and legal terminology is by the authors of this article.

6 Art. 97 of the EAEU Treaty.

7 *Id.* Art. 96.

8 *Id.* Art. 98.

9 Workers are defined in Art. 96, para. 5 of the EAEU Treaty as persons who work according to employment contracts (i.e. employees) and civil law contracts.

10 Лукашенко не видит необходимости в единой валюте и единой надстройке в ЕЭС // Tengrinews. 2 октября 2013 г. [Lukashenko Does Not Consider Necessary Single Currency and Governance in the EAEU, Tengrinews, 10 February 2013] (May 20, 2018), available at http://tengrinews.kz/sng/lukashenko-vidit-neobhodimosti-edinoy-valyute-politicheskoy-nadstroyke-ees-242805/.

discussion of their joint economic issues after about two decades of a deliberate process of detachment. However, the very fact of creation of a single market in the EU has led to a so-called "spill-over effect" by which a purely economic integration has turned into deeper political and legal coherence. We speculate about the possibilities of the same effect for the EAEU after the creation of a single economic and labor market by the EAEU Treaty.

Further, we discuss the influence of the EU on the national labor law of its member states and how this influence may be compared with possible EAEU impact on its member states' national labor law (Section 2). Because of its genesis from independent and quite different legal systems, EU influence on the national labor law and policy of its member states has seemed fragmentary and has touched only upon certain separate aspects of labor and employment relations. By contrast, EAEU integration has started with the legal systems of its member states already very much alike. It is easy in theory to imagine the creation of a supra-national Labor Code for the EAEU.

We conclude the article with an analysis of the prospects for and threats to EAEU labor law integration with reference to the EU experience.

1. EU and EAEU Labor Law Integration: Different Starting Points

The EU and the countries that emerged from the USSR have very different origins for their respective integration efforts.

European integration is rooted in World War II and is based on an understanding that there is a vital necessity to create a system of such deep economic interdependence that it would prevent wars between the European countries in the future, to make war "not merely unthinkable, but materially impossible."[11] The starting point of what is now called the EU was the co-existence on the relatively confined territory of Europe of countries very different in size and culture but rather densely populated. Although some of these countries, such as Germany or France, were larger and more influential than others, none of them was overwhelmingly dominant. In labor and employment relations each European country had its own independent legal system. It is also very important to note that Europe has different sets of traditions in labor relations within its different regions. It is common to speak[12] about four specific social models in the EU: Continental, Anglo-Saxon, Nordic, and Mediterranean.

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[11] *See* the "Schuman Declaration" that was presented by French foreign minister Robert Schuman on 9 May 1950 (May 20, 2018), available at https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en.

[12] *See, e.g.*, André Sapir, *Globalization and the Reform of European Social Models*, 44(2) Journal of Common Market Studies 369 (2006).

For quite a long period of time the European integration process was limited to purely economic issues. The creation of a common economic (and labor) zone within the territory of the modern EU had been proceeding quite slowly and cautiously since 1951 when the European Coal and Steel Community (ECSC) was established.[13] The founding European Economic Community (EEC) Treaty[14] was aimed at free movement of goods, services and capital within the territory of member states. Only one provision[15] dealt with prevention of the so-called "race to the bottom."[16] As Barnard shows, the member states' decision to give priority to economic issues over social matters has led to downgrading social policy.[17] As a result, the EEC had to react by incorporating social matters into its policy and law. The first action of this kind was the adoption of the Social Action Programme in 1974.[18] The necessity of including social matters in regional policy was described in the EEC and later in the EU in terms of a "*spill-over effect*"[19] in which initial economic goals had to be combined with protection of workers and more general social protection of citizens.

This process has been anything but smooth over the decades of European integration when the periods of social policy progress were offset by the waves of stagnation or even deregulation.[20] While the 1970s were a period when the Community paid attention to social issues, probably motivated by the unrest in Western Europe in 1968,[21] the first half of 1980s was marked by stagnation in

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13 It was founded by the Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951) (May 20, 2018), available at http://www.cvce.eu/obj/treaty_establishing_the_european_coal_and_steel_community_paris_18_april_1951-en-11a21305-941e-49d7-a171-ed5be548cd58.html.

14 Treaty establishing the European Economic Community (Rome, 25 March 1957) (May 20, 2018), available at http://www.cvce.eu/en/obj/treaty_establishing_the_european_economic_community_rome_25_march_1957-en-cca6ba28-0bf3-4ce6-8a76-6b0b3252696e.html (hereinafter the Treaty of Rome).

15 Art. 49(d) of the Treaty of Rome.

16 The term "race to the bottom" is commonly used to describe the competition between the developing countries to attract investment from the TNCs leading to the deterioration of the labor standards in these countries. This term is also applied to the competition between companies with the same goal. *See* Definition of Race to the Bottom, Financial Times (May 20, 2018), available at http://lexicon.ft.com/Term?term=race-to-the-bottom.

17 Catherine Barnard, *EC Employment Law* 7–8 (4th ed., Oxford: Oxford University Press, 2012).

18 Council Resolution of 21 January 1974 concerning a social action programme, 1974 O.J. (C 13) 1.

19 *See* Frank Hendrickx & Stefano Giubboni, *European Labour Law and the European Social Model: A Critical Appraisal* in *Comparative Labor Law* 381 (M.W. Finkin & G. Mundlak (eds.), Northampton: Edward Elgar, 2015).

20 *See* more about the history of the EU social policy at Karl Riesenhuber, *European Employment Law: A Systematic Exposition* 18 (Cambridge; Antwerp; Portland: Intersentia, 2012); David O'Keeffe, *The Uneasy Progress of European Social Policy*, 2(2) Columbia Journal of European Law 241 (1996).

21 Mark Wise & Richard Gibb, *Single Market to Social Europe: The European Community in the 1990s* 144 (Harlow: Longman, 1993).

Community social policy and adoption of new legislation in the field of employment. This is usually attributed to the influence of the UK conservatives led by Margaret Thatcher. The new direction in social policy in the second half of 1980s started from the adoption of the Single European Act of 1986.[22] The social part of the new economic integration was very limited and emphasized job creation.[23] The only legal consequence of the Single European Act that affected social matters was the extension of the European Council's power to make decisions on issues impacting the health and safety of workers.[24] More significant measures were taken after the enactment of the non-binding Community Charter of Fundamental Social Rights of Workers of 1989,[25] which has triggered the adoption of the important Directives on working time,[26] on pregnant workers[27] and on young workers.[28] The conclusion of the Treaty on European Union (the Maastricht Treaty) in 1992[29] extended the field of social policy from just employment and social protection to the issues of education, vocational training and youth.[30] More importantly, a separate[31] Protocol and Agreement to the Maastricht Treaty (together referred to as the Social Policy Chapter) were signed to significantly extend EU authority in social matters.[32] This has resulted in the adoption of a new generation of EU labor legislation (*see* Section 2 below). The European Commission approach to social policy has been reflected in

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22 Single European Act, 17 February 1986, 1987 O.J. (L 169) 1, 25 I.L.M. 506.

23 Paolo Cecchini et al., *The European Challenge, 1992: The Benefits of a Single Market* (Aldershot: Gower, 1988), XIX.

24 Art. 119a of the Single European Act.

25 Community Charter of the Fundamental Social Rights of Workers, adopted on 9 December 1989 (May 20, 2018), available at http://www.eesc.europa.eu/resources/docs/community-charter--en.pdf.

26 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, 1993 O.J. (L 307) 18.

27 Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), 1992 O.J. (L 348) 1.

28 Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, 1994 O.J. (L 216) 12.

29 Consolidated version of the Treaty on European Union, 2012 O.J. (C 326) 13.

30 Correspondingly, the initial title of the Treaty of Rome (Social Policy) was relabeled as "Social policy, education, vocational training and youth."

31 They were signed separately because of the UK refusal to take part in the extension of the EU social policy. Since this time, the notion of "two speed Europe" regarding the EU integration started being used. *See* Brian Towers, *Two Speed Ahead: Social Europe and the UK after Maastricht*, 23(2) Industrial Relations Journal 83 (1992).

32 Barnard 2012, at 17–20.

important policy papers of 1993 and 1994.[33] Deeper integration of the EU after the signing of Amsterdam Treaty has also accorded more powers to the Council in issues of social and employment policy.[34] Some cosmetic changes in the powers of the EU with respect to social policy were made by the Treaty of Nice.[35]

Most notable was the introduction of so-called "Open Method of Coordination"[36] in the social sphere as a technique for exchange of information and good practices between the member states. On 1 December 2009 the Treaty of Lisbon[37] came to force. It gave legal power to the EU Charter on Fundamental Rights and further shifted the EU policy in favor of social matters. The most important policy measures that influence current labor law of the member states are the European Employment Strategy[38] and flexicurity[39] policy.

Up to now, the EU has declared the existence of a coherent social policy, including employment strategy and has adopted a certain amount of legislation and case law in a number of specific labor law issues.[40] Modern EU social policy is quite

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[33] Growth, Competitiveness, Employment: The Challenges and Ways Forward into the 21st Century – White Paper. Parts A and B. COM (93) 700 final/A and B, 5 December 1993. Bulletin of the European Communities, Supplement 6/93 (May 20, 2018), available at http://aei.pitt.edu/1139/; European Social Policy – A Way Forward for the Union. A White Paper. Part A. COM (94) 333 final, 27 July 1994 (May 20, 2018), available at http://aei.pitt.edu/1118/. *See* more Tiziano Treu & Marco Biagi, *The Role of a European Social Policy, Labour Law and Industrial Relations in the European Union*, 32 Bulletin of Comparative Labour Law and Industrial Relations 217 (1998).

[34] *See* Berndt K. Keller, *The Employment Chapter of the Amsterdam Treaty. Towards a New European Employment Policy?* in *Changing Industrial Relations and Modernisation of Labour Law: Liber Amicorum in Honour of Professor Marco Biagi* 234–235 (R. Blanpain & M. Weiss (eds.), The Hague: Kluwer Law International, 2003).

[35] Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, 2001 O.J. (C 80) 1.

[36] *See* more about it: Beryl P. ter Haar, *Open Method of Coordination. An Analysis of Its Meaning for the Development of a Social Europe* (Doctoral Thesis, Leiden: Leiden University Press, 2012).

[37] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007 O.J. (C 306) 1.

[38] *See* the information about the European Employment Strategy at the European Commission site (May 20, 2018), available at http://ec.europa.eu/social/main.jsp?catId=101. The effectiveness of this policy has come in for criticism at the level of the EU as a whole. *See* Paul Copeland & Beryl P. ter Haar, *A Toothless Bite? The Effectiveness of the European Employment Strategy as a Governance Tool*, 23(1) Journal of European Social Policy 21 (2013).

[39] Ton Wilthagen & Frank Tros, *The Concept of "Flexicurity": A New Approach to Regulating Employment and Labour Markets*, 10(2) Transfer: European Review of Labour and Research 166 (2004); Martin Keune, *Between Innovation and Ambiguity: The Role of Flexicurity in Labour Market Analysis and Policy Making* 8 (Brussels: European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS), 2008); Marc De Vos, *European Flexicurity and Globalization: A Critical Perspective*, 25(3) International Journal of Comparative Labour Law and Industrial Relations 209 (2009). There is specialized research on the prospects for implementing this policy in the former socialist countries of the EU: Sandrine Cazes & Alena Nesporova, *Flexicurity: A Relevant Approach in Central and Eastern Europe* (Geneva: ILO, 2007).

[40] *See further* in Section 2.

a complicated combination of rules derived from both hard and soft law but without very clear efficacy, and it is full of contradictions and afflicted by disputes between different member states, right and left political forces, and other actors.

The Eurasian situation is rather different. A little more than twenty years ago, all the countries in this regional integration project had been part of a single large country, the Soviet Union. From the legal perspective, the post-Soviet area is much more homogenous than the EU. Unlike the EU countries, all post-Soviet countries had a single starting point in common as they arrived at their current legal systems. Labor legislation was not an exception. Until the collapse of the USSR, the system of Soviet labor legislation had been based on the USSR Constitution of 1977,[41] the Bases of Legislation on Labor of the USSR of 1970,[42] and the Republican Codes of laws on labor that came into force in 1972[43] according to the common model introduced by the Bases of Legislation in 1970 and by various governmental and ministerial resolutions, orders and decrees. The labor codes of all the nominally separate republics within the Soviet Union were almost identical.[44]

This uniformity extended to more than mere legislation. There was also a single legal theoretical doctrine.[45] The existence of the Iron Curtain restricted any international discussion of legal issues mainly to the "socialist camp." Probably because there was so little provision for openly criticizing the basics of the state system and ideology, legal academic discourse in these countries has been heavily

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41 Конституция СССР от 7 октября 1977 г., Ведомости Верховного Совета СССР, 1977, № 41, ст. 617 [Constitution of the USSR of 7 October 1977, Gazette of the Supreme Soviet of the USSR, 1977, No. 41, Art. 617].

42 Закон СССР от 15 июля 1970 г. № 2-VIII «Об утверждении Основ законодательства Союза ССР и союзных республик о труде», Ведомости СССР, 1970, № 29, ст. 265 [Law of the USSR No. 2-VIII of 22 May 1970. On the Adoption of the Framework Labor Legislation of the Union of the SSR and of the Union Republics, Gazette of the Supreme Soviet of the USSR, 1970, No. 29, Art. 265].

43 Кодекс законов о труде РСФСР от 9 декабря 1971 г., Ведомости Верховного Совета РСФСР, 1971, № 50, ст. 1007 [Code of Laws on Labor of the RSFSR of 9 December 1971, Gazette of the Supreme Soviet of the RSFSR, 1971, No. 50, Art. 1007].

44 There were some minor differences between the texts of the Republican Codes of Laws on Labor, but these variations were purely cosmetic. The contents of different republican codes were presented in special comparative tables for convenient usage. *See Таїц И.* Кодексы законов о труде союзных республик: сопоставительные таблицы [Ilia Taits, *Codes of Labor Legislation of the Union Republics: The Comparative Tables*] 1 ff. (Moscow: Yuridicheskaya literatura, 1975).

45 Whether socialist law is a separate legal category or merely a part of a system of civil law is a matter under debate (for more on the issue *see* John Quigley, *Socialist Law and the Civil Law Tradition*, 37(4) American Journal of Comparative Law 781 (1989)). Very reputable scholars have no doubt that in Soviet times such a separate system existed, e.g.: René David & Camille Jauffret-Spinosi, *Les grands systèmes de droit contemporains* 178–206 (Paris: Dalloz, 2002); Raymond Legeais, *Grands systèmes de droit contemporain: une approche comparative* 179–211 (Paris: Litec, 2004); Peter Nayler, *Business Law in the Global Marketplace* 13 (Oxford, Eng.; Burlington, MA: Elsevier Butterworth-Heinemann, 2006). Regardless of how they may be classified formally, the common legal traditions in the EAEU countries are quite evident.

accented on theoretical (and in many respects merely scholastic) issues. The theory of law in socialist countries,[46] even the ones outside the USSR, has been operating with quite a specific set of concepts and terminology ("law relations," "legal facts," "legal capacity," specific attention to principles of law, etc.). In the more than twenty years since the dissolution of the Soviet Union, the labor law of its former republics has undergone quite significant changes. The introduction of market economy institutions that were alien to a planned economy required some adaptation of labor law. The labor law of all former republics of the USSR had to implement legislation on unemployment, to recognize freedom of association "in the capitalist sense," i.e. including the right to strike, and more liberal collective bargaining along with some other issues. However, scholars, officials and practitioners of labor law remained interconnected, and the direction those changes took was in many respects the same.[47] As the *lingua franca* of the region, the Russian language itself has been quite a significant factor in facilitating the common development of labor law.

Most of the former Soviet republics came into existence through a "civilized divorce" of the newly independent states. The first regional structure was established simultaneously with a declaration on behalf of Russia, Belarus and Ukraine that the USSR no longer existed and by the signing of the "Belavezha Accords" in December 1991.[48] The very name of the new regional structure, the "Commonwealth of *Independent* States", underlined that the project was aimed more at dis-integration than integration.

The uniform system of complex economic ties between the regions then released from the larger country was destroyed. This process of separation was accompanied by harsh neo-liberal economic reforms intended to open markets to foreign importers but without effective protection for the suddenly separated national industries. This policy soon led to very distressing humanitarian, social and economic consequences.[49]

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[46] By "socialist countries" (in the past) or "post-socialist" countries (currently) we refer to the East European countries of the Warsaw Pact up to the moment of its termination in 1991, i.e. Bulgaria, Czechoslovakia, East Germany, Poland, Romania, and the USSR (since 1990 the Baltic republics have been considered a separate category). *See* more details about the EU enlargement in Conclusion further.

[47] *See Козик А.Л., Томашевский К.Л., Волк Е.А.* Международное и национальное трудовое право (проблемы взаимодействия) [Andrei L. Kozik et al., *International and National Labor Law: The Issues of Interaction*] 135–136 (Minsk: Amalfeya, 2012); Svetlana Golovina, *The Harmonization of Labour Legislation in Former Soviet Union States* in *Labour Law in Russia: Recent Developments and New Challenges* 39 (V.M. Lebedev & E.R. Radevich (eds.), Cambridge: Cambridge Scholars Publishing, 2014).

[48] Соглашение о создании Содружества Независимых Государств (Минск, 8 декабря 1991 г.), Ведомости СНД и ВС РСФСР, 1991, № 51, ст. 1798 [Agreement establishing the Commonwealth of Independent States (Minsk, 8 December 1991), Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR, 1991, No. 51, Art. 1798].

[49] One pertinent statistic is that life expectancy in Russia decreased from 69.19 years in 1990 to 63.85 in 1994. And it did not rebound to the 1990 level until now. Российский статистический ежегодник [Russian Statistical Yearbook] (Moscow: Russian Federal State Statistics Service, 2009) (May 20, 2018), also available at http://www.gks.ru/bgd/regl/b09_13/IssWWW.exe/Stg/html1/04-01.htm. It is difficult

The economy of all parts of the former USSR was substantially de-industrialized.[50] The disconnection of the former economic ties resulted in a marked degradation of the economies of all the countries of the region.

Another feature of the post-USSR situation is the dominance of Russia within the post-Soviet realm. Russia is much larger than all the other post-Soviet states taken together in terms of territory, population and economy. This situation elicits concerns in the currently independent countries that any integration project in which Russia participates is an imperialist attempt to adjoin and absorb the smaller countries into Russia. These misgivings are a serious obstacle to either economic or political integration within the region. It may explain why all previous attempts to integrate the fragmented parts of the USSR were unsuccessful.

The common necessity to retain economic ties between the countries that had been Soviet republics together with the concerns of the non-Russian components of the former USSR about possible Russian political domination in the region now influence the new shape of the current regional integration.[51] Therefore, as happened almost 60 years ago with the European integration process, the EAEU has started from purely economic issues. This new regional structure consists of a single economic area including a single labor market, but without abrupt attempts to unify the labor law system – at least at this stage of integration.

The intention of the countries of the Eurasian region to create a single economic market including a common labor market entails making the countries accessible to businesses from neighbor EAEU member states. This means that the rules of business conduct in the neighbor countries should be understandable and not fundamentally contradict the rules of the home country. One of the major issues concerning the rules of business conduct is employment and labor relations. Therefore, although the harmonization and unification of labor law is not mentioned as one of the EAEU goals in the EAEU Treaty (*see* Introduction above), the process of economic integration itself is an impetus to the harmonization of labor law. And *vice versa*, the harmonization of labor law will facilitate the process of economic integration of the region.

Also, as the EU experience shows, the concentration on purely economic issues for a certain time leads to a spill-over effect in which economics are combined with

to say how many human lives were sacrificed by recourse to what was called economic "shock therapy" because it is impossible to work out the direct or indirect causes of death in each particular case. Nevertheless, the number lost must be counted in millions. For more details *see* Доклад Комиссии по вопросам женщин, семьи и демографии при Президенте Российской Федерации «О современном состоянии смертности населения Российской Федерации» (1997) [The Report of the President of the Russian Federation Commission on the Issues of Women, Family and Demography "On the Current State of Mortality in the Russian Federation" (1997)] (May 20, 2018), available at http://cccp.narod.ru/work/book/demogr_1.html.

50 *See, e.g.*, Joseph Stiglitz, *The Ruin of Russia*, The Guardian, 9 April 2003 (May 20, 2018), available at http://www.guardian.co.uk/world/2003/apr/09/russia.artsandhumanities.

51 *See also* Vladimir Przhilenskiy & Maria Zakharova, *Which Way is the Russian Double-Headed Eagle Looking?*, 4(2) Russian Law Journal 6 (2016).

social policy because of the necessity to overcome the gap in incomes between the different member states and a resulting desire of the richer countries to protect their domestic labor markets from the poorer ones. Although, as experts have pointed out, social issues were not at the center of the initial European integration, social policy may remain a purely domestic issue only so long as national markets stay relatively closed. But as soon as countries create a common currency and a single market, their social policy becomes relevant to other nations.[52]

The very fact that the former parts of the USSR already have much more homogenous systems of national labor law makes the operation of a single labor market technically much easier than in the EU member states. However, this technical compatibility does not make political integration easier, especially in view of the current events in Ukraine.

It is still too early to state flatly that harmonization of labor law in the EAEU has already begun. However, if the logic of the self-stimulating integration in the EU that started some decades earlier continues to hold, then the spill-over effect should apply to the process of harmonizing labor law as well.

2. Actual Impact of the EU and Potential Influence of EAEU Processes on the National Labor Law of Their Member States

As shown in the previous section, joint social policy in the EEC and later in the EU has been unstable during the decades of integration. The common employment and labor legislation of the region has been following the trends of employment policy in general. Adoption of the Social Action Programme in 1974 (*see* Section 1 above) has launched legislative activity concerning employment. The Community Directives on sex discrimination,[53] collective redundancies,[54] transfer of undertakings,[55] and the

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[52] David M. Trubek & Louise G. Trubek, *Hard and Soft Law in the Construction of Social Europe: The Role of the Open Method of Co-ordination*, 11(3) European Law Journal 343, 345 (2005). *See* for the EAEU discussion on the matter *Мрих А.С.* Нужна ли Евразийскому экономическому союзу единая социальная политика? // Трудовое право в России и за рубежом. 2016. № 1. С. 38–40 [Aleksandr S. Mrikh, *Does Eurasian Economic Union Need a Single Social Policy?*, 1 Labor Law in Russia and Abroad 38 (2016)].

[53] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, 1975 O.J. (L 45) 19; Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, 1976 O.J. (L 39) 40; Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, 1979 O.J. (L 6) 24.

[54] Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies, 1975 O.J. (L 48) 29.

[55] Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, 1977 O.J. (L 61) 26.

protection of workers in cases of employers' insolvency[56] were adopted during this period. After the pause in the promotion of social policy in first half of the 1980s, the end of 1980s and the 1990s were marked by the adoption of the Directives on working time,[57] on pregnant workers[58] and on young workers.[59] The non-binding Community Charter of Fundamental Social Rights has resulted in a number of official Directives on certain aspects of occupational safety and health,[60] on proof of employment contracts,[61] and on posted workers.[62] Somewhat later the Directives on European Works Council,[63] parental leave,[64] and part-time work[65] were adopted. In the 2000s EU legislation again addressed the issues of equal opportunity,[66] European

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[56] Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, 1980 O.J. (L 283) 23.

[57] Council Directive 93/104/EC, *supra* note 26.

[58] Council Directive 92/85/EEC, *supra* note 27.

[59] Council Directive 94/33/EC, *supra* note 28.

[60] Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16(1) of Directive 89/391/EEC), 1989 O.J. (L 393) 1; Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), 1989 O.J. (L 393) 13; Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) Objective, 1990 O.J. (L 156) 9; Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), 1990 O.J. (L 156) 14.

[61] Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, 1991 O.J. (L 288) 32.

[62] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, 1997 O.J. (L 018) 1.

[63] Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, 1994 O.J. (L 254) 64.

[64] Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, 1996 O.J. (L 145) 4.

[65] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, 1998 O.J. (L 14) 9.

[66] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000 O.J. (L 180) 22; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, 2000 O.J. (L 303) 16; Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, 2002 O.J. (L 269) 15; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, 2006 O.J. (L 204) 23.

Works Council[67] and transfers of undertakings.[68] Industrial democracy issues were handled by the adoption of the Information and Consultation Directive in 2002[69] and measures on consulting with employees in European companies[70] and European Cooperative Societies.[71]

Because these EU Directives have a horizontal effect and do not require any ratification by the member states, all these Directives have had a very significant impact on the national employment and labor law of the EU member states. This effect was further developed by the abundant case law of the European Court of Justice on the matter.[72] Nevertheless, the very list of topics of the Directives shows that, although they all touch upon very serious issues of employment, they do not form a coherent system of norms. Most authors informed on the topic consider that European employment supranational legislation is fragmentary and not sufficiently systematic.[73] The same may be said about the influence of the EU norms on the labor and employment law of its member states.

After the expansion of the EU so that it included the post-socialist East European countries, there has been a new and different experience in adapting EU legislation to the states that have recently transitioned from a planned to a market economy.[74]

The EAEU states are also still in the process of adapting their political, economic and legal systems to a market economy. The process of adaptation in those "new" EU member states may at certain points provide some lessons applicable to new supranational regulation in the EAEU. This is the case because both sets of post-

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67 Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, 2009 O.J. (L 122) 28.

68 Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, 2001 O.J. (L 82) 16.

69 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation, 2002 O.J. (L 80) 29.

70 Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, 2001 O.J. (L 294) 22.

71 Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, 2003 O.J. (L 207) 25.

72 *See* Barnard 2012, at 33–48.

73 Abbo Junker, *Der EuGH im Arbeitsrecht – Die schwarze Serie geht weiter*, 39 Neue Juristische Wochenschrift 2527 (1994).

74 In fact, EU law had begun to influence the national labor law of these states even before their accession because the candidate states had to harmonize their law with the EU standards prior to actual accession.

socialist countries have rather similar flaws in the legal regulation of labor, flaws which are deeply rooted in their past and have persisted regardless of their current links with the EU or the EAEU.

Labor law in socialist countries even if they had not been part of the USSR had been modeled on more or less the same paradigm. In all the socialist countries the main source of law was statutory regulation, usually based on their labor codes, which provided quite rigid rules on the conclusion, modification and termination of employment contracts. Because collective labor law was mostly dependent on the statutory regulations of the state, any collective bargaining that occurred was mostly going through the motions to reach an outcome predetermined by the state. One other notable issue was the high level of bureaucratization of employment relations based primarily on the employer's obligation to issue so-called labor booklets and special documentation on personnel according to centrally mandated forms, etc.[75]

Therefore, when the new post-socialist member states joined the EU, the influence of the former paradigms for regulating labor was felt in each of them in a similar fashion. For example, all former socialist countries had problems with industrial democracy,[76] not only in collective bargaining as such, but also in keeping employees informed and consulting with them. When the Eastern European countries joined the EU, they were required to implement the EU Directives on information and consultations,[77] on the European Works Council,[78] and on workers' rights in European companies[79] and European Cooperative Societies.[80] However, experience has shown that incorporation of these Directives into national laws and practices was anything but smooth. Although some of the countries, such as Hungary, already had works councils before their accession to the EU, most of the new member states merely adopted the norms for workers' participation formally, but they failed to make industrial democracy a reality.[81]

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[75] For more on bureaucratic requirements *see* Erika Kovács et al., *Labor Law in Transition: From a Centrally Planned to a Free Market Economy in Central and Eastern Europe* in *Comparative Labor Law*, *supra* note 19, at 403–439.

[76] Trade unions and non-union workers' representative bodies in the socialist countries were very powerful. However, they were strongly affiliated with state. Therefore, trade union democracy was in many instances more an imitation of workers' taking part in decision making than a real process. However, this did not mean that other protective measures for workers were lacking. But these protective measures were centrally controlled by the state. For more details *see* Kovács et al. 2015, at 429–438; Nikita L. Lyutov & Daiva Petrylaite, *Trade Unions' Law Evolution in Post-Soviet Countries: The Experience of Lithuania and Russia*, 30(4) Comparative Labor Law and Policy Journal 779 (2009).

[77] Directive 2002/14/EC, *supra* note 69.

[78] Directive 2009/38/EC, *supra* note 67.

[79] Council Directive 2001/86/EC, *supra* note 70.

[80] Council Directive 2003/72/EC, *supra* note 71.

[81] For more on engagement with employees *see* Merle Muda, *The Impact of European Union Law on Employee Involvement in Estonia*, XV Juridica International: Law Review of University of Tartu 25 (2008); *Workers' Representation in Central and Eastern Europe: Challenges and Opportunities for the Works Councils' System* (R. Blanpain & N. Lyutov (eds.), Aspen: Wolters Kluwer, 2014).

Another serious gap in the labor law of these post-socialist countries, which adoption of EU regulations should have filled, was the lack of explicit prohibition of discrimination. Specific laws based on the EU Directives 2000/43/EC, 2000/78/EC, 2002/73/EC, 2006/54/EC[82] and others have been adopted in all the new member states.[83] Research[84] has also shown the importance of norms on transfer of undertakings, protection of employees in the event of the insolvency of their employer and, perhaps most importantly, in the regulation of working time. Just as with the EU in general, the impact of EU law on these countries was quite significant but fragmentary because it addressed only specific areas of legal regulation and not the legal system as a whole. However, as these countries made the transition from a planned to a market economy, membership in the EU has limited the neo-liberal kind of economic and labor law reforms that were instituted in other post-Soviet states.[85]

There has been discussion about borrowing some of the EU labor law mechanisms mentioned above for labor law of Russia, Belarus, and other countries of the post-USSR region.[86] However, these discussions do not go much beyond purely academic debates. Because of the current chill in political relations between Russia and the EU, it is highly unlikely that Russia will move toward harmonization of its laws, including labor law, with the EU in the near future. If some moves in that direction were made, they would be very partial and labelled as motivated by internal Russian or EAEU policy rather than moving in the direction of the EU.

As has already been said, the EAEU Treaty does not address the harmonization of the national labor law systems among its member states. However, harmonization of labor law may follow as a "spill-over" consequence of economic integration as

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82 *Supra* note 66.

83 European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, The Evolution of Labour Law in the EU-12 (1995–2005). Vol. 3 (November 2008), at 12 (Bulgaria), 108 (Czech Republic), and others (May 20, 2018), available at http://ec.europa.eu/social/BlobServlet?docId=2347&langId=en. For Estonia *see* Merle Muda, *Impact of the European Community Labour Law on Estonian Labour Legislation* in *Labour Law in United Europe. 2003 m. spalio 16–18 d. Tarptautinės mokslinės konferencijos medžiaga* 93 (Vilnius: UAB "Forzacas," 2004).

84 Muda 2008; *Мумрус М.* Польское трудовое право после вступления Польши в Европейский Союз // Российский ежегодник трудового права. 2007. № 3. С. 450–458 [Leszek Mitrus, *Polish Labor Law after the Polish Accession to the European Union*, 3 Russian Labor Law Annual 450 (2007)].

85 For the perspectives of adaptation of some EU approaches to the employment discrimination *see* Nikita Lyutov, *Russian Law on Discrimination in Employment: Can It Be Compatible with International Labor Standards?*, 4(3) Russian Law Journal 7 (2016).

86 *See* Kirill Tomashevski, *Sources of the Belarus Labour Law vs. EU and CIS Global Processes*, 13(1) Transition Studies Review 63 (2006); Трудовое право России и стран Европейского союза [*Labor Law of Russia and the European Union Countries*] (G.S. Skachkova (ed.), Moscow: Rior, 2012); *Мрих А.С.* Трудоправовая интеграция государств Европейского союза и государств Евразийского экономического союза: сравнительно-правовой анализ: Дис. … канд. юрид. наук [Aleksandr S. Mrikh, *The Labor Law Integration in the European Union and the Eurasian Economic Union: A Comparative Analysis: Ph.D. thesis in law*] (Yekaterinburg, 2017).

explained in Section 1 above. Therefore, it seems to be useful and interesting to understand to what extent current domestic labor law of the EAEU member states is suitable for possible harmonization in the future.

In general, the legal systems of the EAEU member states are based on very much the same principles and legal doctrines. The main laws within the field of labor in all these countries are the labor codes which usually regulate the majority (but not all) of the issues concerning labor.[87] More technical norms are usually left to governmental and ministerial decrees. Even the structure of the labor codes is very much alike. Although the sequence of the different sections of the codes is not identical, the contents of chapters and the very wording of the text in them are rather similar. All five EAEU member states adopted new labor codes after the dissolution of the Soviet Union. These codes are not identical and reflect the changes in the political, legal and social situations within each of the countries.

Labor legislation in *Belarus* (its Labor Code, along with a set of independent laws and presidential decrees as well as certain other legislation acts) was drafted with an emphasis on the supremacy of state regulation and a certain degree of authoritarianism. The Labor Code of Belarus[88] (BLC) is coupled with a presidential decree[89] that provides for the conclusion of temporary employment contracts with employees and additional disciplinary measures that significantly degrade the legal position of employees compared to the BLC itself. The BLC stands out among the labor codes of the other former USSR republics because of the low status it has in the hierarchy of laws compared to presidential decrees. In another well-known case President Alexander Lukashenko at the end of 2012 issued a notorious decree[90] suspending the freedom of workers at certain woodworking enterprises to terminate their employment contracts on their own initiative without the employer's consent. This decree clearly contradicts the basic international labor standards concerning the prohibition of compulsory or forced labor. No less notorious is the introduction

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87 *See, e.g.*, *Томашевский К.Л.* Источники трудового права государств – членов Евразийского экономического союза (проблемы теории и практики) [Kirill L. Tomashevski, *The Sources of Labor Law in the Eurasian Economic Union Member-States: The Issues of Theory and Practice*] 128–303 (Minsk: MITSO, 2017).

88 Трудовой кодекс Республики Беларусь от 26 июля 1999 г. № 296-З [Labor Code of the Republic of Belarus No. 296-Z of 26 July 1999] (May 20, 2018), available at http://www.tamby.info/kodeks/tk.htm.

89 Декрет Президента Республики Беларусь от 26 июня 1999 г. № 29 "О дополнительных мерах по совершенствованию трудовых отношений, укреплению трудовой и исполнительской дисциплины" [Decree of the President of the Republic of Belarus No. 29 of 26 June 1999. On Additional Measures on Advancement of the Employment Relations, and on Strengthening of Labor and Executive Discipline] (May 20, 2018), available at http://base.spinform.ru/show_doc.fwx?rgn=18103.

90 Декрет Президента Республики Беларусь от 7 декабря 2012 г. № 9 "О дополнительных мерах по развитию деревообрабатывающей промышленности" [Decree of the President of the Republic of Belarus No. 9 of 7 December 2012. On Additional Measures on Development of the Wood Processing Industry] (May 20, 2018), available at http://president.gov.by/ru/official_documents_ru/view/dekret-9-ot-7-dekabrja-2012-g-1493/.

of the so-called "tax on social parasitism" (*nalog na tuneyadstvo*) in April 2015[91] which led to street protests in Belarus[92] and was repealed in 2018.

Kazakhstan is an example of another trend in the development of post-USSR labor legislation. The Labor Code of Kazakhstan[93] (KazLC 2007) that was adopted in 2007 was the most neo-liberal labor code in the EAEU area, and consequently employers enjoy more flexibility in employment relations than in other countries of the EAEU. For example, an employer in Kazakhstan is entitled to conclude a temporary employment contract without any restriction,[94] while the labor codes of other countries in the EAEU contain exhaustive lists of grounds justifying the conclusion of such temporary contracts.[95] In 2015 a new Labor Code (KazLC 2015) was adopted and came into force on 1 January 2016.[96] It introduces even more flexibility for employers compared to the KazLC 2007. Most notable are the flexible norms on the unilateral amendment of employment contracts at the employer's initiative for economic reasons and the introduction of part-time work, as well as additional grounds for dismissal and some others.[97]

Russian post-socialist development of labor legislation may be briefly described as a complicated mixture of authoritarian trends, neo-liberal policies, and compromises with civil society. The current RLC was adopted at the end of 2001 after more than a decade of very intense political struggle over its ideology. It gives very weak opportunities for collective bargaining (accompanied by loud declarations about trade union rights) combined with institutional guarantees for the continued existence of the huge "old" trade unions which are based on a philosophy of collective labor law which is more typical of a planned economy.[98]

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91 According to the Presidential Decree of 2 April 2015. Декрет Президента Республики Беларусь от 2 апреля 2015 г. № 3 "О предупреждении социального иждивенчества" [Decree of the President of the Republic of Belarus No. 3 of 2 April 2015. On Prevention of the Social Parasitism] (May 20, 2018), available at http://www.mintrud.gov.by/ru/decret_o_igd.

92 *See Радийчук В.* Борьба за тунеядство: 5 главных вопросов о протестах в Беларуси // NEWSONE. 17 февраля 2017 г. [Vladislav Radiychuk, *The Fight for Parasitism: 5 Major Questions Regarding the Protests in Belarus*, NEWSONE, 17 February 2017] (May 20, 2018), available at https://newsone.ua/news/politics/borba-za-tuneyadstvo-5-glavnyx-voprosov-o-protestax-v-belarusi.html.

93 Трудовой кодекс Республики Казахстан от 15 мая 2007 г. № 251-III [Labor Code of the Republic of Kazakhstan No. 251-III of 15 May 2007] (May 20, 2018), available at http://online.zakon.kz/Document/?doc_id=30103567.

94 Art. 29, para. 2 of the KazLC 2007.

95 *See, e.g.*, Art. 17 of the BLC; Art. 57 of the Russian Labor Code (RLC) (Трудовой кодекс Российской Федерации, Собрание законодательства РФ, 2002, № 1, ст. 3 [Labor Code of the Russian Federation, Legislation Bulletin of the Russian Federation, 2002, No. 1, Art. 3]).

96 Трудовой кодекс Республики Казахстан от 23 ноября 2015 г. № 414-V [Labor Code of the Republic of Kazakhstan No. 414-V of 23 November 2015] (May 20, 2018), available at http://online.zakon.kz/Document/?doc_id=38910832#sub_id=2040000.

97 Art. 46.1, Art. 52, para. 3 and some others of the KazLC 2015.

98 For more details *see* Nikita Lyutov, *Freedom of Association: The Case of Russia*, 32(4) Comparative Labor Law and Policy Journal 933 (2011).

This division of the trade unions into "old" and "new" is quite common in the EAEU region as a whole. The "old" trade unions were a very important quasi-governmental institution functioning as an intermediary between workers and employers during the socialist period. Having outlived the socialist system, they have been privatized. But in the majority of cases these "old" trade unions never really became independent representatives of employees. Newly formed trade unions must often compete with these older organizations.

The Labor Code of *Kyrgyzstan* (KyrLC) was adopted in 2004.[99] Most of its articles repeat the initial version of the RLC word for word. Sometimes the sequence of articles or wording is slightly different, but in the majority of cases it is almost the identical law. Some regional specifics were taken into account by the legislators of Kyrgyzstan. Instead of Russian norms on work in the Far North,[100] the KyrLC deals with regulation of work in the high mountain regions where natural resources are extracted;[101] special attention is paid to rotational work[102] that is also characteristic of resource extraction, which is an especially important sector of Kyrgyzstan's economy.[103]

The *Armenian* Labor Code (ALC) was also adopted in 2004[104] under the apparent influence of the RLC and other regional labor codes. The structure, contents and ideology of most of its norms repeats or at least resembles Russian law. This applies to the definition of employment relations and employment contracts, the typology of labor disputes, basic principles of labor law listed in the text of the Code, issues of collective bargaining and strikes, material liability of employers and employees towards each other, labor discipline and others. On certain issues the ALC looks more protective of workers than the other EAEU labor codes. For example, there is a limitation of the maximum term of a temporary employment contract to five years for situations in which a number of consecutive short-term contracts

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[99] Трудовой кодекс Кыргызской Республики от 4 августа 2004 г. № 106 [Labor Code of the Kyrgyz Republic No. 106 of 4 August 2004] (May 20, 2018), available at http://online.adviser.kg/Document/?doc_id=30296269&mode=all.

[100] Chapter 50 of the RLC; Закон РФ от 19 февраля 1993 г. № 4520-I "О государственных гарантиях и компенсациях для лиц, работающих и проживающих в районах Крайнего Севера и приравненных к ним местностях," Ведомости СНД и ВС РФ, 1993, № 16, ст. 551 [Law of the Russian Federation No. 4520-I of 19 February 1993. On the State Guarantees and Compensations for the Persons Working and Living in the Far North Regions and the Surrounding Areas, Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation, 1993, No. 16, Art. 551].

[101] Chapter 33 of the KyrLC.

[102] Chapter 30 of the KyrLC.

[103] For more details *see Раманкулов К.С.* Трудовое право Кыргызской Республики [Kubanychbek S. Ramankulov, *The Labor Law of the Kyrgyz Republic*] (Bishkek: Turar, 2008).

[104] Трудовой кодекс Республики Армения от 9 ноября 2004 г. [Labor Code of the Republic of Armenia of 9 November 2004] (May 20, 2018), available at http://www.parliament.am/legislation.php?sel=show&ID=2131&lang=rus.

are concluded.[105] Other regional codes limit only the maximum duration of each individual employment contract. Unlike Russian and other EAEU labor codes that give only a three-month term for employees to appeal to court for the resolution of a labor dispute, the ALC provides a general civil law term of three years and for certain types of disputes (such as disputes about wages and others) employees are not limited by any term at all.[106] On certain issues Armenian employers have more powers than in other regions. For example, the material liability of employees (except for specific situations listed in the law) is limited to one monthly salary in most EAEU countries but to three months' salary in Armenia.[107] There are some specific general provisions of the ALC that exist only there but not in other EAEU codes, such as the definitions of the legal capability of employees and employers,[108] the notion of "illegal work"[109] and others. However, the ALC also looks in general quite compatible with other regional labor codes.

A closer look at the contents of the above-mentioned codes also shows many signs of suitability for harmonization. All the codes, as well as the legal doctrines of the EAEU countries, treat the employment contract as the central feature of labor law. The rules concerning concluding, modifying and terminating an employment contract are rooted in the same foundations developed in Soviet times. For example, the regulations on dismissal of an employee have very distinct characteristics in these codes. In the majority of countries in the world an employment contract may be terminated on the initiative of the employer for "valid reasons" where these reasons are not specified directly in the legislation but defined in case law.[110] The labor codes of the post-Soviet countries use a different approach derived from the labor codes of the USSR republics. All specific grounds for dismissal are exhaustively listed in the labor codes or some other laws covering specific categories of workers. There are a few exceptions for separate categories where additional grounds may be stated directly in the employment contract, but they are rather rare (company directors, domestic and distance workers and certain others). The great majority of grounds for dismissal are either identical or very much alike in all these nominally different labor codes. Even the sequence of grounds for dismissal is the same, sometimes including logical gaps in the texts where special and general grounds mingle in the same articles along with references to other special grounds in separate articles.

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105 Art. 95 of the ALC.

106 *Id.*

107 *Id.* Art. 239.

108 *Id.* Art. 15.

109 *Id.* Art. 102.

110 General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, International Labor Conference, 82nd Session, 1995 (Geneva: ILO, 1995), at 31–61.

Parallels in the legal regulation of employment relations may be found in any provision of labor law in the countries of the EAEU region: working hours, disciplinary actions, occupational safety and health, setting wages, etc. The methods for resolving labor disputes are also very similar. Even the flaws in the labor codes of the EAEU countries seem to be alike or the same. For example, Kazakhstan and Russia have unique definitions of a lock-out[111] that state that a lock-out is a termination of the employment contract by the employer because of the employee's participation in a legal strike or a collective labor dispute. "Lock-outs" defined in this idiosyncratic way are explicitly prohibited in both labor codes. That prohibition does not ban an employer from refusing to give strikers access to the territory of the company if they want to participate in a sit-in strike, i.e. the employer is permitted to declare a defensive lock-out in the sense of that term as it is understood almost everywhere else.[112]

Another example is the prohibition of forced labor: Belarus and Russian Labor Codes contain[113] a general prohibition of forced labor combined with prohibition of some of its specific forms mentioned in the International Labour Organization (ILO) Convention No. 105.[114] Such a construction seems illogical and can lead only to practical confusion. If some specific forms of forced labor are prohibited, does this mean that forced labor in general is not? Law makers in both countries failed to take into account the earlier ILO Convention No. 29[115] on the matter which contains a weaker regime of prohibition of forced labor with a special "transitional period"[116] during which it is still allowed in a limited fashion. That is why the newer Convention No. 105 was needed to provide for the immediate prohibition of specific forms. Obviously there was no such need in the much more up-to-date national labor codes.

Sometimes the legal norms of one country in the region reflect the academic and political discussions of another. For example, there has been a discussion in Russia lasting over ten years about how the shamefully low[117] level of the minimum

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111 Art. 415 of the RLC; Art. 178 of the KazLC 2015.

112 Antoine T.J.M. Jacobs, *The Law on Strikes and Lockouts* in *Comparative Labor Law and Industrial Relations in Industrialized Market Economies* 707 (R. Blanpain (ed.), 10th ed., Aspen: Wolters Kluwer, 2010), 707; *Strikes and Lock-Outs in Industrialized Market Economies* (R. Blanpain & R. Ben-Israel (eds.), The Hague: Kluwer Law International, 1994).

113 Art. 13 of the BLC; Art. 4 of the RLC.

114 ILO, Abolition of Forced Labour Convention (No. 105), 25 June 1957 (May 20, 2018), available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO.

115 ILO, Forced Labour Convention (No. 29), 28 June 1930 (May 20, 2018), available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174:NO.

116 *Id.* Art. 1, para. 2.

117 As of 1 May 2018 the monthly minimum wage in Russia has been set at 11,163 rubles, i.e. about 146 euros (April 2018 exchange rate). *See* Федеральный закон от 7 марта 2018 г. № 41-ФЗ "О внесении изменения в статью 1 Федерального закона 'О минимальном размере оплаты труда,'" Собрание

wage must at least exclude the additional payments to a worker such as regional payments associated with the severe climate of the Far North, family benefits etc. so that those payments would be paid over and above the minimum wage level. Up to now Russian law has not favored these claims on behalf of workers. Unlike the Russian Labor Code, the ALC and KazLC 2015 explicitly declare[118] that these additional payments are not to be included in the minimum wage. This declaration on the issue seems to be a clear reflection of the discussion in Russia.

These examples, which may be multiplied,[119] show that authors of labor legislation in the region use the doctrine and laws from neighboring countries as a source of inspiration much more frequently than they use international labor standards or legislation of non-Russian speaking countries. Even the norms that were adopted after the collapse of the USSR are nevertheless dependent on previous socialist legal doctrines and the debates arising from their application in changed circumstances.

Compared to the EU region, national labor law of the EAEU member states is already *almost* harmonized. Nevertheless, there are some differences in the labor legislation and practice within the EAEU region which are in contradiction to the economic need of employers to have predictable rules and to conduct their business in a uniform way within the territory of the EAEU once they have freedom to provide services anywhere within the borders of the member states. These differences are aggravated by the freedom of member states to change labor law at their own discretion, and this may prompt a future political discussion about the creation of some kind of unified law, including even the creation of a supranational EAEU Labor Code. However, any such discussion is probably doomed to failure in the near term because of political tensions.

In addition to concerns about Russian domination over the region, another serious political obstacle to regional labor law integration is the lack of a clear and concise social policy in each of the EAEU member states. Despite the declaration of the goals of social and employment policy in the constitutions and legislation of each of the states, their practical implementation is highly questionable. For example, in Kyrgyzstan the greatest risks and obstacles to reforming labor relations derive from a lack of strategic and coordinated government interventions accompanied by institutional weakness of the social partners. The principal government agency that

законодательства РФ, 2018, № 11, ст. 1576 [Federal Law No. 41-FZ of 7 March 2018. On Amendment to Article 1 of the Federal Law "On Minimum Wage Amount," Legislation Bulletin of the Russian Federation, 2018, No. 11, Art. 1576].

118 Art. 179, para. 1 of the ALC; Art. 104, para. 1 of the KazLC 2015.

119 For more about such prospects *see Головина С.Ю.* Перспективы развития трудового законодательства в рамках Евразийского экономического сообщества // Российский ежегодник трудового права. 2008. № 4. 351–368 [Svetlana Yu. Golovina, *The Prospects of the Labor Law Development Within the Eurasian Economic Community Framework*, 4 Russian Labor Law Annual 351 (2008)].

is responsible for labor policy in Kyrgyzstan has been so incessantly restructured and subjected to so many changes of leadership[120] that it could not possibly establish a coherent and lasting labor policy. In interviews it was noted that the Ministry's staff is not well qualified and is currently not much prepared to administer matters related to labour and social development; the staff does not take the initiative or have their own position on most of the matters that come under their purview.[121] The situation in other EAEU states is not identical with Kyrgyzstan's, but the ability of those states to sustain a coherent social and labor policy is still very much in question. Creation of a supranational labor law policy framework for the EAEU with clearly specified goals and benchmarking may serve as a partial solution of this problem at the national level for each of the EAEU member states.

To sum up this Section, we can conclude that EU influence on the labor law of its member states was quite significant albeit fragmentary and non-systematic. By contrast, in the EAEU countries the technical and legal potential of member states to harmonize their labor law is much greater because their current legal systems are already much closer to each other than the laws of the EU member states. However, we can only speak about the potential influence of the EAEU on the labor law of its member states because this integration process is still at an early stage, and it is far from clear what the prospects are for its further development in the future.

Conclusion

Coming back to the question that was raised in the title of this article, whether the basic features and trends of development of EU and EAEU labor law are comparable, the answer must be generally positive. However, it is also clear that although two systems are comparable, they are so different that they look like mirror images of each other in certain respects.

While the EU project is an attempt to apply some general common legal frameworks to certain separate aspects of legal regulation of labor in the very diverse national labor law systems, the EAEU currently refuses even to formulate the harmonization of labor law among its member states as a goal. Nevertheless, as the EU experience shows, integration that starts as a purely economic process has a tendency to turn into deeper political and legal integration. Therefore, labor law harmonization in the EAEU may arise as a consequence of economic integration and the creation of a single market.

Inasmuch as the national labor law systems of EAEU member states are already much more homogenous than in the EU, there is no *technical* problem in creating

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[120] 16 chiefs in the 26 years since Kyrgyzstan gained its independence, which means that the average stay in office was about 1.5 years.

[121] The information gathered in the process of preparation of the Issues Paper on the prospects for the labor law reform in Kyrgyzstan for the ILO by one of the authors of this article in 2017.

common labor legislation for the Eurasian region which could be much more coherent and unified than the EU labor law. All the labor law systems of the EAEU countries belong to a single family and theoretically may be harmonized rather easily. Within this process of harmonization some common flaws in the legislation may be amended and best practices from other countries and international labor standards may be adopted. Some good examples for adaptation may be found in such EU norms as those on the protection of workers in the process of ownership changes of an enterprise, establishment of underwriting agencies in case of an employer's insolvency, stronger mechanisms for informing and consulting with workers, better collective bargaining rights, etc.

However, *political* factors, i.e. the current chill in relations between Russia and the EU states, may be an obstacle to including these beneficial features of EU supranational labor law norms in the legal order of the EAEU. Nevertheless, such borrowing would not necessitate any political labelling that would indicate that the EU is its source, and it may readily be declared an autonomous initiative of the EAEU. This is especially so because that EAEU framework would have the technical potential to address a much wider spectrum of supranational regulation of labor issues than the EU labor norms.

EAEU labor law integration is much more difficult from still another *political* point of view. Despite the economic benefits of a larger integrated economy, concerns about Russian regional domination may be a very serious obstacle to tighter integration. Moreover, it is questionable to what extent each individual EAEU member-state itself is capable of erecting and maintaining coherent labor law and employment policy at the national level. Whether the supranational structure would compensate for the lack of national policy is very much open to question.

This means that, although there is a good technical and legal potential for integrating labor law within the Eurasian region, the prospects of such integration are far from clear at present.

It seems that the current neo-liberal economic policy of the EAEU member countries that has its roots in early the 1990-s along with large gaps in income and a worsening economic situation may lead to political and social instability[122] which may in its turn push governments to begin experimenting with legitimate social policies. Labor law may be one of the pillars of such policies.

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[122] There are serious signs of such instability growth in Russia at the time of writing. *See Бизюков П.* Первые признаки большого цунами // Газета.Ru. 18 января 2016 г. [Pyotr Bizyukov, *The First Sights of the Big Tsunami*, Gazeta.Ru, 18 January 2016] (May 20, 2018), available at http://www.gazeta.ru/comments/2016/01/15_a_8023709.shtml. Information about Kazakhstan is available in *Ткачев И., Волкова О., Химшиашвили П., Ратников А., Сухаревская А.* Обвал по просьбе трудящихся: чем закончится девальвация в Казахстане // РБК. 20 августа 2015 г. [Ivan Tkachev et al., *The Fall According to the Worker's Demand: What Will Be the Outcome of the Kazakhstan Devaluation*, RBK, 20 August 2015] (May 20, 2018), available at http://www.rbc.ru/economics/20/08/2015/55d6168d9a794727e7b4739e.

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Information about the authors

Nikita Lyutov (Moscow, Russia) – Associate Professor, Head of the Department of Labor Law and Social Security Law, Kutafin Moscow State Law University (9 Sadovaya-Kudrinskaya St., Moscow, 125993, Russia; e-mail: nlioutov@mail.ru).

Svetlana Golovina (Yekaterinburg, Russia) – Professor, Head of the Department of Labor Law, Ural State Law University (21 Komsomolskaya St., Yekaterinburg, 620137, Russia; e-mail: golovina.s@inbox.ru).