

Trade Union Membership as a possible way of defense of atypically employed worker's rights in Russia

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Biography

I was born in Moscow in 1987. Studied law at HSE (Moscow, Russia) and FH Frankfurt (Germany). I have passed an internship at SOTSPROF – the first Russian independent trade union association and at the Center for Labour and Social Rights, one of the most reliable NGOs in this field in Russia.

Currently I live in Israel and continue my studies at the IDC Herzeliya in the field of Diplomacy and Conflict studies.

For the last 2 years I'm working on my post-graduate paper "Problem of precarious work in comparative aspect".

Abstract

The present paper reflects the basic research on how membership in a trade union may affect non-core staff, how it can improve their state of affairs.

The main subject of research is Russian legislation and court practice, although some comparative analyses with EU states was done.

The main areas of research are: possibilities of becoming a trade union member on a "ground" basis instead of sectorial principle, ability to improve the state of precarious employees.

Another important aspect of membership is legal support of the employees who are underprotected in terms of their precarious jobs. Under Russian legislation a trade union may act on behalf of an employee or a group of employees in court which is helpful in current realm when a worker with an extremely low income cannot afford judicial costs.

Promoting trade union membership as a way to improve the level of life and social stability and security among temporary staff may help not only to prevent the decay in popularity of trade union movement, but also somehow to inhibit the spread of precarious work.

The decline in trade union membership and growth of rates of precarious jobs are of greatest concerns among Russian labor law lawyers and trade unionists. Very commonly they create a vicious cycle causing one another.

The aim of present article is an attempt to prove that membership in a trade union may become an efficient instrument if not to reduce the number of precarious workers, but at least to significantly improve their current position.

Practice shows, that this instrument works good not only in Russia, but in a wide range of European countries, as well as in some other states all over the world.

1. **General description**

The decrease in trade union membership is being noticed since late 1970. The change in employer-employee relations, which became more individualized and the move from big factories to a more qualified work, which means the lesser number of employees and the more active participation of them in decision-making process are among the reasons for such a decay.

On the other hand companies need to pay more attention to core business, specialize and outsource not only secondary and tertiary operations, but also functions that cannot be fully used or maintained at a competitive quality in-house. “The relation between the two trends may be formulated in such way: while the knowledge – based economy needs to activate an ever growing proportion of more specialized knowledge workers, companies are driven to employ relatively fewer specialized knowledge workers in-house.”¹

For the certain number of employees work from home or work under civil-law contracts or other ways of “precarity” may be viewed as more attractive as they are free to organize their working process, working schedule etc. Although in most of the cases such work may cause a lot of negative outcomes: low levels of income and income security, low job and employment security, bad working conditions, limited access to training, limited

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Nielsen N. Chr. Employment and Growth in the knowledge-based Economy. The concept of technological service infrastructures: innovation and the creation of good jobs. OECD Documents, 1996., p. 178

social security rights and/or limited voice. Precarious employment affects not only the working situation of the person in such employment but also his or her private life and the household he or she is part of through, for example, low income, problems in accessing loans or high levels of insecurity (Keune, 2010). Especially that remains true to youth (Waddington) and women (<http://www.laborrights.org/issues/precarious-work>).

Within the terms of the explanatory frameworks that incorporate both the propensity and opportunity to unionize it is argued that young workers are concentrated in precarious employment at workplaces where unions are rarely present, hence the opportunity for young workers to unionize is reduced (Waddington). Workers of all ages in precarious employment desire to reduce job insecurity and their vulnerability to exploitation and intimidation. Should unions establish a presence at work-places where young workers in precarious jobs are employed an emphasis among the young members on support would be expected as young workers seek greater security and protection from exploitation and intimidation (Waddington).

Recent studies point towards a trend of polarisation of the labour market in many European countries, following the growth in employment in both the highest-skilled and higher quality (professional and managerial) and lowest-skilled and lowest-quality (personal services) occupations, with declining employment in the middle of the distribution (manufacturing and routine office jobs) (Goos et al. 2009; FernandezMacias and Hurley 2008).

Trade union organizations all over the world focus on how inter-organizational relationships influence the opportunities for workers to exercise their voice, in particular through trade unions. It is widely accepted that the role and influence of trade unions has

been reduced due to the mixture of more assertive management styles, a shift to individualism and a decrease of workers' interest in trade unions. Yet more problematic the increased tendency for organizations to sub-contract tasks that used to be undertaken in-house – typically to smaller firms, has meant that that the workplaces in which these tasks are now located have also changed; in other words, worker's voice has been externalized. In such situations workers are in a double bind. “Not only are these workplaces predominantly less unionized than the sites where the work used to be undertaken, the workers involved are under the direct control of different employers or belong to agencies. In short, serious though the problem is for workers who remain employed by continuing organizations, the position of workers who are employed by suppliers or by agencies is much more uncertain and atomized”.²

The other possible reason for increasing the number of non-core staff is the willing to lower the influence of a trade union. That may be a way of a strikebreaker activity as will be discussed below with Russian experience as an example.

Reducing precariousness and segmentation and improving the social rights of precarious workers has become a salient political issue across Europe. At EU level this is manifested by the prominent role of the EU Charter of Fundamental Rights, including a series of social rights. Also, a number of Directives (e.g. those on part-time and fixed-term employment) aim to improve social rights of the employed, while the European Employment Strategy urges member states to complement the increasing flexibility in the labour market with 4 decent social security and stable employment relationships (Keune, 2010).

The Council of Global Unions in 2012 formulated the following principles of dealing with precarious work, especially agency work:

- The primary form of employment shall be permanent, open-ended and direct employment.
- Workers provided by temporary work agencies must be accorded equal treatment and opportunities, including equal pay for equal work, with regular and permanent employees with respect to terms and conditions of employment.
- Workers employed through temporary work agencies must have a recognized and enforceable written contract of employment, specifying their terms and conditions of employment.
- Where agencies are permitted to operate, they must be strictly regulated, including through licensing.
- Temporary work agencies must not be used to eliminate permanent and direct employment relationships, diminish the conditions under which work is performed, avoid collective bargaining relationships with trade unions or effectively make it impossible for an agency worker to join a trade union.
- Employers should consult trade unions before agency workers are used and negotiate over any effects that the use of these agency workers might have on regular employees, on working conditions or on the collective agreement.
- The use of temporary agencies should be restricted to cases of legitimate need. As a minimum, there should be defined limits on the use of agency workers, as well as restrictions on the duration of such employment.

- Workers provided by temporary work agencies must be guaranteed access to information on health and safety regulations in the workplace and be given the same equipment, induction and training as permanent workers.
- Adequate and continuous social protection for agency workers, including social security coverage, must be ensured by employers and government alike.
- Temporary work agencies must treat workers without discrimination on the basis of race, ethnic origin, colour, sex, sexual orientation, religion, political opinion, nationality, social origin, age, disability or any other form of discrimination. Appropriate regulatory frameworks (governmental, co-regulation or self-regulation) on private employment agencies should include and promote these principles, rights and obligations. These include the minimum standards outlined in ILO Convention No. 111.
- Given the general over-representation of women in agency employment and the disparity in wages between permanent and agency workers, particular attention must be given to ensure that the equal pay provisions of Convention No. 100 are applied, including equal pay for work of equal value.
- The ILO should play a much more active role in ensuring that temporary employment agencies respect basic labour standards, as well as in collecting data on abuses and best practices, while at the same time monitoring and analyzing trends in employment in both the private and public employment agency sector. This research should focus on issues relating to the economic crisis and the Global Jobs Pact. The Global Unions should participate in this work.
- Workers supplied by temporary work agencies must never be used to replace striking workers or undermine industrial action.

- Temporary work agencies must not charge any fees to workers for dispatching them.
- The user-enterprise must be held liable for all financial and other obligations with respect to temporary agency workers should the agency fail to honor its responsibilities (Unions, 2012).

The comparative country studies help us to understand trade union approaches towards precarious employment and precarious workers, not only from an empirical perspective but also from a more conceptual perspective. According to some studies in this field the following trade union strategies can be defined:

- inclusion: union strategy to include/integrate precarious employees into their constituency and serve as broad interest representation organizations without making specific differences between precarious and regular workers.
- exclusion: union strategy to serve as interest representation organizations for insiders (regular employees) only and exclude precarious workers from their constituency and from union interests.
- separation: union strategy to separate precarious workers from the rest of their constituency and treating precarious workers as a particular group that requires special attention, aims and instruments in interest representation.
- reduction: union strategy that aims to bridge the divide between precarious and regular employees by reducing precariousness (e.g., through legal regulation giving less incentives to precarious work). Unions strive to influence/implement changes in employment conditions of precarious employees in order to bring these closer and comparable to employment conditions of regular employees.

- elimination: trade union strategy aiming at eliminating all forms of precarious work in the economy. Treating precarious employees may encompass inclusion as well as separation, but these are perceived as temporary strategies on the way towards a full elimination of precarious employment (Keune, 2010) (Kahancová, 2011).

2. Russian experience

The number of Russian enterprises, implementing agency work is about 3,5%, which can be compared to 2,8% in Germany. In period of 2008–2011 this number has doubled. More commonly agency work is required by construction firms (29,3%) and service (36,3%). More than a half of Russian enterprises contain less than 5% of agency workers and 14% use more than 20% of agency workers (Smirnykh).

Under present Russian legislation (which would be enacted on 1.01.2016), agency work is prohibited (art. 56.1 of Labour Code of Russian Federation). Although licensed agencies are enabled to provide such services with some restrictions:

- Core and agency employees must enjoy the same level of wages and working conditions (nothing about social or financial bonuses)
- Period of employees provision cannot exceed 9 months
- Applicable for certain categories, such as students, single parents, large families and released from jails.

Temporary work has also some strict limitations, as well as work under the civil-law contracts. The problem could be less significant, if the population knew more about its labour rights. Unfortunately, the rates of “grey” and “black” employment are tremendous.

Although Russian history of trade union movement counts since 1905, the possibility to be a member of an independent trade union was partly recovered only in late 1980s, and unfortunately still becoming more and more restricted.

There still exist a “state” trade union association (FNPR) and a lot of smaller independent trade union associations (SPR, KTR, SOTSPROF). All of them exercise different approaches towards the problem of precarious employment. More commonly FNPR excludes non-core employees from its regards and does its best to prevent the access of not direct employees. Opposing to this practice independent trade unions exercise inclusive approach.

The episode of 1992, when large amount of miners from Donetsk (Ukraine) moved to Rostov mines in Russia due to the fact that although salaries in Russia remained low, they were higher than in the Ukraine – is one of the first examples of such practice. To reduce the social tension, trade union of Miners decided to spread the Russian tariff agreement over miners coming from Donetsk. That helped to save working places for the initial staff and improved the state of affairs of migrant workers. (Rupets V., 2005).

As was mentioned before, independent trade unions are doing their best to promote the inclusive approach. For that purpose some legislative changes are needed. Under present legislation, a primary union may be created only by employees of the same employer (art. 3 of the Law on Trade Unions of Russian Federation). That means that non-core employees cannot enjoy membership of the same trade union with their colleagues, and cannot be covered by the terms and conditions of collective agreement. The only way for them to express their voice and right to unionize is to create a primary trade union at the agency, with other employees, who very probably work in absolutely other spheres. For

example, one of the largest agencies in Russia providing staff, Kelly services, provides companies with employees, varying from workers to accountants, from constructors to pharmacists. This makes the idea of “territorial” unionizing pointless.

Other kind of precarious work is temporary employment. Although under Russian legislation there exist only certain number of cases allowing temporary contracts, very often employers misuse their right. As an example of such practice it is easy to mention the recent case of two employees of PCMA Rus (Peugeot Citroen Mitsubishi Automobiles Rus) plant in Kaluga. This employer constantly tries to reduce the number of general agreements, the number of temporary staff reached 40%. In present case the short-term contracts were not prolonged because the employees became the members of the trade union. The latest managed to prove the unfair reason for such termination of employment and the employees were reinstated as permanent workers (Russia: IndustriALL affiliate ITUWA celebrates victory against short-term contracts, 2015).

After the collapse of the Soviet Union and until 2014 Russia was the main object for gastarbaiters/migrant workers from the countries of FSU. That is one of main challenges of present Russian labour law. Currently the grey segment in employment and wages is extremely huge, and estimated at the rate of 20% (M., 2015). The number of illegal migrant workers cannot even be estimated and is expected to be at the level of 3 mln people. Some trade unions consider an inclusion of migrant workers to be a good idea to avoid the replacement of core workers and to improve the conditions of migrant workers, which very often seem to be inhuman.

The research on protest activity in Russia in 2014 showed the significant growth of protests among ununionized workers, including migrants and other unprotected

categories. This became a significant change in actors of protest movement in 2014, alongside with the decrease of number of protests, organized by trade unions and increase of spontaneous actions of employees. In 2013 55% of all protest activities were organized by primary trade unions and almost one third included the upper level trade union organizations (associations). That was interpreted as a sign of increase of institutionality of labour protests.

That is a sort of weird institutionality, based upon the methods, not allowed by Russian labour legislation (legitimate, but not legal). Involvement of trade unions acting in accordance to legislation prevented the employees from committing spontaneous actions and helped to establish some sort of a dialogue with the employer. That is why even the slight decrease of trade union involvement must be regarded as a alarming symptom.

Analysis of data on trade union involvement in protest activities shows that its decrease is not connected to trade union passivity or their unwillingness to be involved. More commonly it is connected to the appearance of protest activity in the spheres, where it was almost never noticed before. The most vivid example are the protests of food service and city transportation.

Factories stop being the main source for labour protests. It is important to mention, that the protests are being organized by such categories of employees, who never used protest as a tool for improvement of their labour conditions and who were never trade union members. Such unionized categories are from such sectors as public transportation, housing and communal, food service etc. It caused a lot of other changes in protest movement.

Those trade unions, who manage to control the situation in unionized spheres, are not the ones to blame in inactivity or refusal to be involved in protests. The only thing that can be posed as fault is the lack of expansion to the sectors where no trade unions presented, so they don't share their knowledge, influence and experience (Pyotr, 2015).

Generally speaking, trade union membership and close cooperation between the trade unions on the global level may potentially serve to improvement of principle of "equal pay for equal job", especially for the workers of the same employer working in different regions of the world, when the range between their working conditions and salaries vary drastically.

While attempting to solve the problems of agency work it is necessary to clear up the party, which is going to be the employee's representative and defend their rights in courts. According to the Russian legislation, preparation, signing and bargaining of collective agreements is upon the representatives of employer and employees. Formally, the agency employee's employer is agency. Agency cannot be a party to social partnership activities (related to collective bargaining) as far as the employee exercises his labour function in the other organization.

Some agencies support the idea of trade union membership for its employees, but the role of such trade unions is very doubtful. They cannot influence the wage rate, working hours, working conditions etc. Trade union inspection will not be entitled to enter the territory of the factory. That also works opposite the art. 28 of Law on Trade Unions, granting the provision of a space (room) for trade union activities.

Some of trade union activists suggest the implementation of subsidiary responsibility of employers and agencies towards employees. For example, there exists art. 155 of Russian

Labour Code. According to that norm agency has to pay for the period of downtime (as the employer has to cover the expenses of downtime period). Logically, it could be efficient to spread that responsibility on the accepting organization to secure the rights of employees in case the agency is not capable to meet the obligations. This idea found its reflection in recent amendment to Labour code, art. 341.5, establishing the subsidiary responsibility.

Among the main instruments, adopted by Russian practice towards precarious work it's necessary to mention the following:

- addressing precarious work in collective agreements to improve the terms and conditions of precarious workers;
- litigation, taking precarious employment cases to court;
- influencing the legislative process at central level through social dialogue or industrial action to improve the legal rights of precarious workers;
- mobilizing and organizing precarious workers in trade unions.

Conclusion

Despite the struggle of trade unions against the further spread of precarious work, both in Russia and in other states, experience shows the further attempts to make the labour relations more flexible.

One of the means of doing so is lengthening the period of fixed-term contracts. This was exercised in Czech Republic, Spain, Portugal, Greece and Romania (Schömann, 2012).

Another way – is to increase the number of renewals (Netherlands and Poland).

Belgium, the Czech Republic, Greece, Romania and the United Kingdom have opted to introduce or amend the regulations on temporary agency work (Schömann, 2012).

Creation of new types of contracts may serve as an attempt to regulate atypical contract, which can result in decay in employees' rights protection. Those contracts may also target at specific categories of workers, such as youth, as it happened in Greece.

Trade unions exercise every-day struggle against further spread of precarious jobs. They do their best to reduce the number of temporary staff and to improve their position and working conditions.

Although different trade unions in different countries all over the world use different strategies to do so, it is possible to generalize the following:

- Decrease in trade union membership make trade unions less powerful.
- Growing number of non-core workers demolishes the influence of trade union on decision – making process
- Growing number of migrant workers can be a good source of new members, which can also serve to control the number of migrants
- Increase in the number of agency workers may lead to new types of cooperation between accepting organization, agency and trade unions

The studies also show that unions use a variety of strategies and instruments to address problems of precarious work, including collective bargaining, influencing national policies and legislation through social dialogue or campaigning, litigation in courts,

organizing precarious workers and providing them with services, mobilization and campaigns to influence public opinion. None of these is sufficient by itself and achieving success requires their combined use. This also because from a union perspective they all have their strengths but also their weaknesses or problematic sides. For example, collective bargaining is the traditional regulatory instrument for unions and may provide them with direct leverage over the conditions of precarious workers. At the same time, in many countries only part of precarious workers are covered by such agreements, while in several cases the bargaining power of unions has proven to be insufficient to achieve their goals. Legislation has the advantage of having in principle a comprehensive coverage. At the same time, it does not react rapidly to the emergence of new types of precarious employment, employers continue to explore the boundaries of legislation and improvements in legislation depend very much on the colour of the governments in power. To have effective legislation, it was in some cases shown that union monitoring and litigation is indispensable (Keune, 2010).

Organising precarious workers in trade unions is becoming more and more a key issue. Getting precarious worker in the unions makes it easier to represent them and to cover them under collective agreements. Also, with union membership under pressure, they have the need to capture this growing group to maintain their relevance. From the studies it emerges that organising precarious workers is notoriously difficult task. At the same time, it has worked in a number of cases quite well, especially where ample resources were dedicated to it, union leadership provided its support and also when public opinion was mobilized. But even in those cases it is complicated to maintain the success when resources dry up and support dwindles. This shows that to really capture the precarious

workers, unions have to strongly increase their effort put into organizing. This can only be achieved if the unions in general and the leadership in particular clearly and consistently position themselves as representatives of the weaker parts of the labour market, and back this up with the necessary resources (Keune, 2010).

Finalizing the above mentioned and regarding the precarious work as an unwelcomed practice, we can say that the worst effects can be overcome by the increased involvement of trade unions especially by the inclusion or spread of its regulations on precarious workers.

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