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HARMONIZATION THE EURASIAN ECONOMIC UNION COUNTRIES' LABOR LEGISLATION PRINCIPLES

Creation of united labor market on the territory of Eurasian economic Union leads toapproximation of the labor laws of the Union's states. That kind of approximation aims to make cooperation and functioning of the newborn union more effective. The problem concerned the development of the directions and approaches of formation of the uniform labor legislation, among which are the institutes of an employment contract. The article considers the issues of harmonization ofthe EAEU countries labor legislation, balance between principles of labor law and the generally recognized world standards in the labor field. The article provides analysis of current legal acts adopted by the member states on the state level and in the framework of the EAEU. The article considers the need to develop a unified concept of harmonization of labor legislation, which, we believe, should be understood as a rapprochement of national labor laws, but not their unification, reduced only to the development of uniform standards designed for similar relations. Harmonization of the labour legislation of EurAsEC States should be considered from the point of view of its rapprochement, and not from the point of view of its unification, carried out toa State in order to further its development. In this sense, the harmonization of labor legislation in the EAEU states and the unification of labor legislation in a single country, carried out using national legal techniques, methods, should be considered as philosophical categories: general and private.

Key words: labor relations, Eurasian Economic Union, principles of law, principle of prohibition of discrimination, forced labor.

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Еуразиялық экономикалық одақ елдерінің еңбек заңнамасы қағидаттарын үйлестіру

Еуразиялық экономикалық одақ аумағында бірыңғай еңбек нарығын құру ЕАЭО елдерінің еңбек заңнамаларын барынша тиімді ынтымақтастық пен жаңа экономикалық одақтың жұмыс істеуі мақсатында жақындастыру қажеттілігіне әкеледі. Осыған байланысты бірыңғай еңбек заңнамасын қалыптастырудың бағыттары мен тәсілдерін әзірлеу туралы мәселе өткір көтерілуде. Мақалада ЕАЭО елдерінің еңбек заңнамаларын ары қарай гармонизациялау мәселелері, еңбек құқығы қағидаттары мен еңбек саласындағы жалпы танылған әлемдік стандарттардың арақатынасы қаралады. Мақалада ЕАЭО елдерінің ағымдағы мемлекеттік және Одақ шеңберінде қабылданған заң актілеріне салыстырмалы талдау жасалынады. Мақалада еңбек заңнамасын үйлестірудің бірыңғай ұғымын әзірлеу қажеттілігі қарастырылады, оны ұлттық еңбек заңнамаларын жақындастыру деп түсіну керек, бірақ оларды ұқсас қатынастарға есептелген біркелкі нормаларды әзірлеуге ғана әкелетін біріздендіру емес. ЕурАзЭҚ мемлекеттерінің еңбек заңнамасын үйлестіруді одан әрі дамыту мақсатында қандай да бір мемлекетке жүргізілетін біріздендіру позициясынан емес, оны жақындастыру позициясынан қарау қажет. Осы тұрғыдан алғанда ЕАЭО мемлекеттеріндегі еңбек заңнамасын үйлестіру және ұлттық заңдық тәсілдер, тәсілдер көмегімен жүргізілетін жеке алынған елдегі еңбек заңнамасын біріздендіру философиялық жалпы және жеке санат ретінде қарастырылуы қажет.

Түйін сөздер: еңбек қатынастары, Еуразиялық экономикалық одақ, құқық қағидаттары, кемсітушілікке тыйым салу қағидаты, мәжбүрлі еңбек.

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Гармонизация принципов трудового законодательства стран Евразийского экономического союза

Создание единого рынка труда на территории Евразийского экономического союза неизбежно повлечет за собой необходимость в сближении трудовых законодательств стран ЕАЭС в целях наиболее эффективного сотрудничества и функционирования нового экономического союза. В этой связи остро встает вопрос о выработке направлений и подходов формирования единого трудового законодательства. В статье рассматриваются вопросы гармонизации трудовых законодательств стран ЕАЭС, соотношение принципов трудового права и общепризнанных мировых стандартов в сфере труда. В статье проводится сравнительный анализ текущих законодательных актов стран, принятых на государственном уровне и в рамках ЕАЭС. В статье рассматривается необходимость в выработке единого понятия гармонизации трудовогозаконодательства, которое, как мы полагаем, следует понимать как сближение национальных трудовых законодательств, но не их унификацию, сводимую лишь к выработке единообразных норм, рассчитанных на сходные отношения. Гармонизацию трудового законодательства государств ЕврАзЭС необходимо рассматривать с позиций его сближения, а не с позиции его унификации, проводимую в каком-либо государстве в целях его дальнейшего развития. В этом смысле гармонизация трудовогозаконодательства в государствах ЕАЭС и унификация трудового законодательства в отдельно взятой стране, проводимая с помощью национальных юридических приемов, способов, нужно рассматривать как философские категории: общее и частное.

Ключевые слова: трудовые отношения, Евразийский экономический союз, принципы права, принцип запрещения дискриминации, принудительный труд.

Introduction

We think that fundamental international principle – the principle of the right to work should be taken intoaccount as its legal and scientific interpretation in the EEU States differs and in Kazakhstan are excluded from legislation.

It is through common, identical constitutional principles feasible to build general legislation, because this category of right objectively reflects needs of society through legislation via manifestation of consciousness and law enforcement activities of legislators.

Currently, there is no consensus viewaboutthe concept of legal principlesin legal science. Summarizingapproaches to the notionof "legal principles"thatare found in the literature, It can be divided into main three. Firstoneisa traditionalapproach, thatexists in what is called traditional indigenous legal systems (Islamic law, Hindu Law). The notion of "legal principles" in those systems as such was not created, although there is a complex of fundamental ideaswhich are in fact legal principles. The second is the Romano-Germanicapproach that embodied incountries with a Romano-Germanic legal tradition. Forthemsuchconceptoflaw sourcesunder whichright is not createda prioriand not contained in legal statutes only is common. Moreover, some countries establish directly general legal principlesas a source of law. Forexample, the Judge in Austria, Greece, Spain, Italy and Egyptin case of gaps in legislation is required to refer to general principles of law (David R. Sources of law).Article 6 of the Civil Code of Spain states that there are "general principles arising from Spanish codes and legislation" among the sources of law (David R., Joffre-Spinozy K., 1998). The French State Councilas a higher authority of administrative justicewhen deciding on particular cases refers to justice as a source of law (David R., Joffre-Spinozy K., 1998, p.110).According to R.David's opinion, general principles reflect "subjugation of right bydictate of justice as it is understood in certain historical era" (David R., Joffre-Spinozy K., 1998, p.108). It is strong anti-positivist tendencycommon for the Romano-Germaniclegal tradition, as David R., says. In particular,this is supported byFederal Supreme Court(Bundesgerichtshof) and Federal Constitutional Court of Germany (Bundesverfassungsgericht). The twoorgans announced in a series of decisions thatconstitutional lawis not restricted tothe text ofBasic Law but include "some general principles which were notconcretizedin positive by legislator", thereis suprapositive law even linking constituent

authority of legislators. Thus, general principles of Romano-Germaniclegal traditionare regarded asa sort ofsupreme law. Anglo-Saxon approach is a feature of countries related to legal systemwith a similar name. Concept of general principles of law historically didn't turn out in Anglo-Saxon countries. If there is a gap in the law, cases were addressedby reason. Later that principle was replaced bynatural justice invented by English courts. Justice as a category has dual-use nature in English law. Thus,justice (equity) served as an instrument adjustingdecisions of the civil trial-court,on appeal,in the Chancellor courts. Principles of natural justiceform the basis for making decisions in the case of law gaps. Therefore, "principles of natural justice" are used in Anglo-Saxon countries instead of "legal principles" that, on top of everything, include procedural guarantees such as right to protection. It is important to note thatgeneral legal principles and principles of natural justice, above all, have the task of ensuring the fundamental human rights.

A word "principle" means "basis", "leading idea", "beginning" in Latin, and their philosophical messagewas founded by the law scientists straight into the concept of legal principles.

In particular, a number of authors, including S.S. Alekseyev, interpret the term of legal principles as follows: "Principles of law are guiding ideas characterizing the content of law, its essence and purpose in society" (Alekseev, S.S., 2005). Kazakh jurists E.N. Nurgaliev and S.A. Bukharbayev, while supporting this view, note that such an understanding of the term reflects the external aspect of its content (Nurgalieva, E.N. &Nurgalieva, S.A., 2004). However, despite the unity of opinions and approaches of scientists in the general definition of law, the issue of the objective and subjective nature of the principles of law is still debatable in scientific circles. Some scholars adhere to the view of the subjective nature of legal principles and regard the principles of law as fundamental subjective ideas, views that are strictly abstract, not fixed by law, thereby transforming them intoa theoretical category of legal consciousness. Thus, for the ideological position of legal principles, along with other researchers, (D.A Kovachev, L.S Yavich, O.V Smirnov, A.M Vasiliev),R.Z. Livshits, said that about fact that the principles of law are fundamental ideas, the beginnings that express the essence of law, the ideas of justice and freedom (Livshits, R.Z., 1994).A number of researchers, including V.M. Semenov, pointing to the objective nature of legal principles, which in turn areexpressed in the fact that their formation and development is associated with the material conditions of society and social relations. We join the opinion of theoreticians in the field of law, G.KH. Shafikovaand M.S. Sagandykov that the principles of law have both objective and subjective qualities. They are objective because they are conditioned by real economic and social qualities, and are subjective, since they are the results of law-making activity of the state, intellectual activity of the legislator (Shafikova, G.Kh., 2004).Thus, certain researchers are certainly right when they say that legal principles, being guiding, fundamental principles of law, being enshrined in the law, should not be identified with the rules of law, in other words, the principles of their legal significance are much higher than the norms of law (Abaideldinov, T.M., 2001).

If we analyze the labor legislation of the EAEU countries, the similarity of the principles is observed in the labor legislation of all the EAEU member states. A special feature of labour legislation in the Republic of Belarus is that the Labour Code of the Republic of Belarus (hereinafter the Labour Code of the Republic of Belarus), unlike labour legislation of other States, because it does not contain a separate chapter or section on the principles of labour law. Legal principles in the sphere of work are enshrined in the Constitution of the Republic of Belarus, as well as in certain norms of the Labour Code of the Republic of Belarus; Similarly to the constitutions of the Republic of Kazakhstan, the Russian Federation, the Republic of Armeniaand the Republic of Kyrgyzstan.

We believe that the basis of the unified harmonized labor legislation of the EEU's countries should be generally recognized labor legal norms and principles enshrined in international legal instruments, uniform terms and definitions.

Problem statement

The prohibition of forced labor is one of the fundamental principles of international labor law enshrined in the 1998 ILO Declaration. Consideration of it as one of the fundamental principles of the functioning of labor relations in the EAEU and the unified labor legislation, in our opinion, should begin with the definition of this concept. According to ILO Convention No. 29, 1930 concerning Forced or Compulsory Labor, the term "forced or compulsory labor" means any work or service required of a person under threat of any penalty for which that person has not voluntarily offered his services (ILO Convention No. 29, 1930).

Definitions of "forced labor" differ in the labor legislation of the EEU countries. In this case, the

Republic of Kazakhstan is the only participating country that has established a precise definition of forced labor in accordance with an international document, whereas in the labor legislation of the rest of the States of the Union, the concept of forced labor has a more free interpretation. Thus, the Labor Code of Kazakhstan refers to forced labor as any work or service required of a person under threat of any punishment for which that person has not voluntarily offered his services. The Labor Codes of Kyrgyzstan, Russiaand Belarus give a truncated concept of forced labor as work under threat of any punishment or force. The Convention defines forced or compulsory labor through two interrelated elements: (1) work under threat of any punishment and (2) for which a person has not voluntarily offered his services. In the definition given by the above-mentioned countries, forced labor is defined only through the first feature, the second component is absent. The Labor Code of Armenia does not provide at all for the interpretation of the term "forced labor," establishing only any form or nature of forced labor and violence against workers (Labor code of Armenia).

It also should be noted that in Russiaand Belarus, the definition of forced labor is supplemented by conditions of coercion to work for purposes (art. 13 of Labor code of the Republic of Belarus,art. 4 of the Labor code of the Russian Federation):

- In order to maintain labour discipline (means of maintaining labour discipline);
- As a measure of responsibility for participation in a strike (means of punishment for participation in strikes);
- As a means of mobilizing and using labour for economic development (a method of mobilizing and using labour for economic development);
- As a punishment for the presence or expression of political views or ideological beliefs opposite to the established political, social or economic system (means of political influence or education or as a punishment for the presence or expression of political views or ideological beliefs opposite to the established political, social or economic system);
- As a measure of discrimination on the grounds of race, social, national or religious affiliation (upsent inLabor code of the Republic of Belarus).

In this case, we believe that the allocation of the above-mentioned conditions will not be necessary if the labour legislation of the EAEU countries contains an accurate and verbatim definition of forced labour, as interpreted by ILO Convention No. 29 "On Forced or Compulsory Labour" (ILO Convention No. 29)

In addition, the Labour Code of the Russian Federation has gone beyond, Designated by international norms and expanded the list of forms of forced labour, To include in this notion the violation of the prescribed time limits for payment of wages or the payment of their full amount, As well as the employer 's demand from the employee to perform work duties, if the employee is not provided with means of collective or individual protection or the work threatens the life or health of the employee. Thus, according to the Labour Code of the Russian Federation, forced labour also includes work that an employee is forced to perform under threat of any punishment (force), while under this Code or other federal laws he has the right to refuse to perform it, including in connection with:

- Violation of the established time limits for payment of wages or payment of wages not in full;
- Immediate threat to the worker 's life and health due to violation of labour protection requirements, in particular, failure to provide him with means of collective or individual protection in accordance with established standards (Labor code of the Russian Federation).

According to ILO experts who conducted a study of the phenomenon of forced labour in modern Russia, such an expansive interpretation of the concept of forced labour is ineffective for two reasons. First, both cases are inherently different from forced labour, and the relevant rights of employees should be protected through other legal mechanisms (wage protection and labour protection). Otherwise, measures toabolish forced labour will mainly focus on wage protection, occupational safety and health, that is, the meaning of this norm as a legal enforcement of the prohibition of forced labour will be "blurred." Secondly, the inclusion of these cases in the concept of forced labour leads toa contradiction with the international norms governing this issue (V. Anishina, D. Poletayev, E. Tyurukanova, S. Shamkov. M, 2004).

Under international labour law, the term "forced or compulsory labour" does not include:

(A) any work or service required by the Compulsory Military Service Laws and applied to work of a purely military nature;

(B) any work or service that is part of the ordinary civil duties of citizens of a fully self-governing country;

(C) any work or service required of a person as a result of a judgement handed down by a judicial authority, provided that the work or service is carried out under the supervision and supervision of the

public authorities and that the person is not ceded or placed at the disposal of private persons, companies or societies;

(D) any work or service required under emergency circumstances, that is, in cases of war or disaster or threat of disaster, such as fires, floods;

(E) Minor work of a community nature, i.e. work performed for the direct benefit of the collective by the members of the collective in question, and which may therefore be considered ordinary civic duties of the members of the collective provided that the population itself or its direct representatives have the right to express their opinion as to the feasibility of the work (Conventions and recommendations adopted by the International Labour Conference. 1919–1956).

Article 8 of the Labour Codeof the Republic of Kazakhstan, establishing the principle of prohibition of forced labour, does not refer to the performance of works which, formally possessing signs of forced labour, are not such and constitute works: (a) are part of the ordinary, civil duties of citizens established by the laws of the Republic of Kazakhstan; B) performed for the direct benefit of the collective by members of this collective, and which therefore can be considered ordinary civil duties of members of the collective provided that they or their representatives have the right to express your opinion on the expediency of these works. Let us not hide that the reflection of these legislative innovations presents some complexity, aggravated by the legislator ‘s kind of interpretation of paragraphs “in” and “e” of the Convention concerning forced or compulsory labour.For example, paragraph “c” of the Convention does not include in the term “forced or compulsory labour” any work or service that is part of the ordinary civil duties of citizens of a fully self-governing country “; And paragraph “e” refers to “small-scale community work,” i.e. work performed for the direct benefit of the collective by the members of the collective in question, and which may therefore be considered the ordinary civic duties of the members of the collective, provided that the population itself or its direct representatives have the right to express their opinion as to the feasibility of the work. Having avoided commenting on article 7 of the Labour Code of the Republic of Kazakhstan in terms of understanding “ordinary civil duties of citizens established by the laws of the Republic of Kazakhstan,” one of the co-authors of the article-by-article practical comment of the Labour Code of the Republic of Kazakhstan, with regard to works that are not forced labour, designated by us in paragraph “b,” expresses his ideaof them as follows: “Such works can be related to the needs of an enterprise or organization (industrial, socio-cultural, economic, etc.),” – says the scientist (Labor Code of the Republic of Kazakhstan).

We believe that the legislator ‘s free interpretation of the provisions of the Convention on forced or compulsory labour ratified by the Parliament of the Republic of Kazakhstan, which is limited to giving the concept of forced labour, “which is the basis of article 7 of the Labour Code of the Republic of Kazakhstan,” does not contribute to the development of the theory of law, makes it difficult to perceive it as a legal principle in the process of enforcement (Abaideldinov T.M., 2015).

Research question

The prohibition of discrimination at work is a fundamental principle of international labour law. International law against discrimination is enshrined in ILO Convention No. 111 on Discrimination in Respect of Employment and Occupation (1958) (ILO Convention No. 111). International law on non-discrimination in labour relations is reflected in existing national legislation. In accordance with article 14, paragraph 2, of the Constitution, “noone may be subjected toany discrimination on the grounds of origin, social, official or property status, sex, race, nationality, language, attitude to religion, beliefs, place of residence or any other circumstances.” Thus, the inadmissibility of discrimination, including in the field of labour, directly follows from the norms of the basic law of the Republic. The constitutions of the EAEU member states also contain norms prohibiting discrimination, including in the field of labour.

In general, the interpretation of the principle of prohibition of discrimination at work, as well as the definition of discrimination in the Labour Codes of the EEU member countries, is similar and well suited to the requirements of international labour standards. The exception is the Republic of Armenia, where the Labour Code does not provide a separate norm on discrimination at work. A single reflection of this principle can be seen in Clause 3 of Article 180 of the Labour Code of Armenia: “When applying the system of qualification of work to both men and women, the same criteria should be applied, and this system should be designed in such a way as to eliminate any discrimination on the grounds of sex.”

Despite the fact that the labour legislation of the EAEU member countries has incorporated the norms of international labour acts concerning the prohibition of discrimination in the sphere of work, the problem of labour discrimination exists. Discriminatory practices in the field of labour relations are

very diverse, and situations of violation of rights are numerous. It is characteristic that labour discrimination is non-violent – it is less likely to manifest itself in the form of violence, much less lead to the commission of crimes – and therefore (not just because of the scope of labour relations) it is more prevalent than other, more severe forms of discrimination.

Of course, discrimination can be caused by many factors separate for each state of the Eurasian Union, but we believe that common features can be identified in several common causes of different forms of discrimination.

The first is the lack of development of experience in the fight for the rights of citizens, workers in a situation of discrimination. And the weak development of this experience can be seen both in people, organizations and the state.

The second reason can be identified by the so-called dominance of informal practices over formal ones. This phenomenon is due to the prevalence in legislation of a large number of "dead norms," which perform their certain tasks and functions declaratively, while in practice they do not work. In such a situation, the population recognizes the most effective adaptive strategy of social behaviour. Ordinary citizens, and employees, among others, are confident that it is necessary not to defend their rights, but toadapt to the requirements put forward by employers. The prohibition of discrimination is ignored within the framework of the dominance of the informal system of relations as the freedom of speech, freedom of organization and other rights of citizens and workers are ignored. In many cases, workers are not only not ready to resist themselves, but also refuse to support those people and organizations that are willing to defend their rights.

The third reason relates to the very nature of labour relations, namely the existing differences between workers in the labour sphere. In the field of labour relations, it is necessary to record a large number of differentiating criteria, and many of them are functionally necessary. Some criteria were found to be acceptable, while others were found to be unacceptable, that is, to give rise to discrimination.

But the main problem is that in society there is no clear ideaof what discrimination is, what its manifestations are and how, and most importantly, what its harm is and why to fight it. Such representations are not available to employees, employers or other subjects of labour relations called upon to ensure the normal functioning of this sphere (representatives of the authorities, courts, law enforcement officials). Research and practical work experience show how mixed assessments are given by a society of discrimination. Many justify less favourable stereotypical treatment of people of different appearance, the wrong sex, age, etc., and this category includes not only business representatives, but also employees themselves (Koloditskyi A., 2015).

Purpose of the study

There is no clear definition of "discrimination" in the labour legislation of the EAEU States, while article 1 of the Convention "On Discrimination in Employment and Occupation" refers toany distinction, exclusion or preference based on race, colour, sex, religion, political opinion, foreign origin or social origin resulting in the destruction or violation of equality of opportunity or treatment in employment and occupation. States, after consultation with representative employers 'and workers' organizations where they exist and with other relevant bodies, may establish additional prohibited criteria for discrimination. There is a significant difference between the approach of national legislators and that of the International Labour Organization. For example, the key words in article 6 of the Labour Code of the Republic of Kazakhstan are "restriction in labour rights and freedoms." And the key words in ILO Convention No. 111 are "distinction, exclusion, preference resulting in the destruction or violation of equality of opportunity or treatment." Thus, the TC of the Republic of Kazakhstan (in principle, like the labour legislation of other countries) treats discrimination more narrowly, as it essentially speaks only of rights, while the Convention establishes that differences lead to the destruction of equality of opportunity or treatment. It appears that the violation of equality of opportunity and the restriction of rights in practice are different things.

Under article 2 of the above-mentioned Convention, each ILO member State shall, For which the Convention is in force, "undertakes to define and impleament national policies, Aimed at promoting, consistent with national circumstances and practices, Equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination against them. "Agreement No. 2 of the ILO Declaration on Fundamental Principles and Rights at Work (1998), ILO member States, regardless of their ratification of the relevant ILO conventions, are obliged to respect, promote and implement the fundamental principles of labour relations, including non-discrimination in employment and occupation. Thus, we consider it necessary toadd to the language of the principle of prohibition

of discrimination at work in the national legislation of the EAEU countries the "distinction, exclusion, preference leading to the destruction or violation of equality of opportunity or treatment" provided for in the ILO Convention "On Discrimination in Employment and Occupation."

Research methods

In order to carry out a comparative analysis of the conceptual apparatus of the labour contract in the Republic of Kazakhstan, the EAEU countries, as well as other foreign countries, the method of comparative law was used, which includes a number of methods, such as micro-comparison, external comparison, normative comparison, doctrinal comparison. Micro-alignment includes systemic-structural and functional analysis of elements of such micro-objects as legal norms and their parts, articles of normative and legal acts, legal institutions(Malinovsky A.A., 2016). When using the method of external comparison, objects belonging to the legal systems of different states, such as labor legislation of the EEU countries, etc., were compared. For the purpose of comprehensive study of the concept of employment contract, definition of its definition, the method of doctrinal comparison was used, which consists in comparison of different positions of scientists on the same issues (Fletcher J., Naumov A.V., 1998). Normative comparison consists in comparison of requirements of legal norms, legislative definitions of compared normative legal acts in order to identify similarities and differences. In the course of the comparative analysis of labour norms of Kazakhstan and foreign legislation using the method of normative comparison taking intoaccount the terminological self-declaration of definitions in the countries of near and far abroad, it was revealed that there are no normative definitions of the employment contract in the legislation of some foreign countries.

Conclusion

Thus, on the basis of the above, it can be concluded that despite the fact that the Republic of Kazakhstan (like the rest of the EAEU countries) has ratified an important part of the ILO Conventions; The basic principles and norms formulated in these ILO conventions and recommendations are reflected in the legislation of the Republic of Kazakhstan, and some Conventions have not yet been ratified. Thus, the Republic of Kazakhstan has not ratified one of the most important ILO Conventions No. 158 "On Termination of Labour Relations," which restrict the use of fixed-term employment contracts, which include a contract, as they generally worsen the legal situation of the employee because of the right of the employer to dismiss the employee after the expiration of the contract or if the employee refuses to conclude a contract that does not suit him.There are alsoother issues that need clarification. In this case, the question is rightly raised as to why, under the same conditions of ratification of international labour instruments, including the ILO Conventions, States 'approaches to the implementation of certain international standards in national legislation differ? This issue is partly resolved by the process of harmonization of labour legislation, bringing them into something harmonious, holistic, uniform. The ideaof harmonization will allow to introduce into the national labor legislation of individual EAEU countries those international labor norms and standards that for any reason were not or could not be borrowed and applied.

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