

Legal opinion

Regulating of child labour in creative works

by

Wiebke Düvel

within

LO-TCO

Baltic Labour Law Project

Case 143, Russia 40

Summary:

According to article 63 of the Labour Code of the Russian Federation, it shall be permitted to conclude a labour contract with persons attaining the age of sixteen.

In cases of completing the basic general education or leaving the general educational establishment in accordance with the federal law, persons shall be entitled to conclude labour contracts at attaining the age of fifteen. There is an exception of these rules, namely with the consent of one parent (guardian, custodian) and a patronage body, a labour contract can be concluded with a student attaining the age of fourteen for performing light work out of school hours which shall not be harmful to his/her health and not detrimental to the study process.

It is necessary to pay attention to the fact that in the movie industry, organizations, theaters, theatrical and concert organizations, circuses, etc., it shall be permitted, with the consent of one parent (guardian, custodian) and a patronage body, to conclude labour contracts with persons under the age of fourteen for participating in the creation and/or performance of art works without any harm to their health and moral development. Thus, Russian labour legislation does not establish a minimal age for concluding a labour contract in such cases.

The question is:

How to address issues concerning child labour in creative works in EU countries?

INTERNATIONAL EXPERT OPINION

This case is dealing with the question of child labour in the entertainment/media/arts sector and the problem that the Russian legislation does not foresee any minimum age in this sector.

On the international and European level, the minimum age for workers shall not be under the age of 15. But the need for exceptions for some sectors and activities was seen, so special provisions have been established. The entertainment sector is one of the mentioned exceptions. But if in the legislation exceptions are possible, this always goes in hand with certain means of protection for the young workers, such as special working conditions, etc.

A) International level

Regarding the international level the main legal provisions on the matter can be found in the ILO Recommendation No.146 and the ILO Conventions No. 60, 138.

I) ILO Convention No. 60 Minimum Age Convention (Revised), 1937

This Convention was signed by the Russian Federation in 1956. In this Convention exceptions to the minimum age of children in the interests of art, science or education are laid down enabling children to perform. But always following the same logic these exceptions do not go without restrictions protecting the young workers, which are: that the work cannot be dangerous to health and moral, that the education must be ensured and that the work after midnight is prohibited.

Article 4

“1. In the interests of art, science or education, national laws or regulations may, by permits granted in individual cases, allow exceptions to the provisions of Articles 2 and 3 of this Convention in order to enable children to appear in any public entertainment or as actors or supernumeraries in the making of cinematographic films.

2. Provided that-

- a) no such exception shall be allowed in respect of employment which is dangerous within the meaning of Article 5, such as employment in circuses, variety shows or cabarets;
- (b) strict safeguards shall be prescribed for the health, physical development and morals of the children, for ensuring kind treatment of them, adequate rest, and the continuation of their education; and
- (c) children to whom permits are granted in accordance with this Article shall not be employed after midnight.”

II) ILO Minimum Age Convention No. 138, 1973

This Convention was signed by the Russian Federation in 1979.

In this Convention can be found further restrictions to protect child workers, those are: a permit to work by the authorities granted in individual cases, a limited number of working hours and certain working conditions.

Article 8

“1. After consultation with the organizations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of

employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.”

III) ILO Recommendation No. 146 on minimum age, 1973

This ILO Recommendation is of course a very general non-binding tool regarding the minimum age of workers, but nevertheless it can be taken from it, that generally speaking a different minimum age in different sectors is not desired, but that a general minimum age of not less than 15 years should be fixed.

“6. The minimum age should be fixed at the same level for all sectors of economic activity.

7. (1) Members should take as their objective the progressive raising to 16 years of the minimum age for admission to employment or work specified in pursuance of Article 2 of the Minimum Age Convention, 1973.

(2) Where the minimum age for employment or work covered by Article 2 of the Minimum Age Convention, 1973, is still below 15 years, urgent steps should be taken to raise it to that level.

Concerning the approach in different sectors Article 11 states:

11. Where, by reference to Article 5 of the Minimum Age Convention, 1973, a minimum age is not immediately fixed for certain branches of economic activity or types of undertakings, appropriate minimum age provisions should be made applicable therein to types of employment or work presenting hazards for young persons.

In Article 13 the essential principles for work of young workers are laid down. The most important restriction regarding this case is the one under b) on the limitation of working hours in a day and a week.

13. (1) In connection with the application of the preceding Paragraph, as well as in giving effect to Article 7, paragraph 3, of the Minimum Age Convention, 1973, special attention should be given to--

(a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work;

(b) the strict limitation of the hours spent at work in a day and in a week , and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities;

(c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days;

- (d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults;
- (e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;
- (f) the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.”

B) European level

The main legislation on the subject is to be found in Article 5 of the Directive on the protection of young people at work dealing amongst others with cultural or similar activities.

l) Directive 94/33/EC on the protection of young people at work

The restrictions to the exception to be found in European legislation are similar to the ones found on international level: prior authorization decided on a case to case basis is needed (except for children older than 13 years) and working conditions are to be laid down via legislative or regulatory provisions.

Article 5

“Cultural or similar activities

1. The employment of children for the purposes of performance in cultural, artistic, sports or advertising activities shall be subject to prior authorization to be given by the competent authority in individual cases.

2. Member States shall by legislative or regulatory provision lay down the working conditions for children in the cases referred to in paragraph 1 and the details of the prior authorization procedure, on condition that the activities:

(i) are not likely to be harmful to the safety, health or development of children, and

(ii) are not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

3. By way of derogation from the procedure laid down in paragraph 1, in the case of children of at least 13 years of age, Member States may authorize, by legislative or regulatory provision, in accordance with conditions which they shall determine, the employment of children for the purposes of performance in cultural, artistic, sports or advertising activities.

4. The Member States which have a specific authorization system for modeling agencies with regard to the activities of children may retain that system.”

II) Revised European Social Charter

The Revised European Social Charter was signed by the Russian Federation the 14th September 2000, but it has not been ratified yet. In its Article 7 the Charter gives the general principles regarding child work.

Article 7 – The right of children and young persons to protection

“With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training; (...)
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations; “

The European Committee of Social rights considers acceptable under paragraph 1 as exception to the general prohibition children authorised to work in the performing arts.

In 1995 the Committee gave the following conclusion regarding Belgium legislation:

“As far as work in the latter sector was concerned, the Committee noted that children (in Belgian legislation this meant all young people still subject to compulsory full-time education) could be employed solely on the basis of individual exemptions granted by the competent authorities, subject to an opinion of the head teacher in cases where the work in question required them to be absent from school. It noted that individual exemptions were only granted for a fixed period and activity, and that this activity had to feature among those set out in the act, namely the employment of children as actors, extras, singers, musicians or dancers in events of a cultural, scientific educational or artistic nature; the

employment of children as actors, extras, singers, musicians or models for filming or sound recordings or for live radio or television broadcasts for advertising or other purposes; the employment of children as extras or models in photo sessions for advertising or other purposes; the employment of children as models or extras in fashion shows or collections. It noted that in addition to a number of general restrictions applicable to all children (a minimum of fourteen hours rest between finishing work and starting work each day, a compulsory forty-eight consecutive hours off in the week, a ban on working more than five consecutive days), there were special statutory restrictions on working conditions according to the age of the children concerned:

- children up to and including the age of six could obtain up to six exemptions per year for activities where their presence could be required for a maximum of four hours a day between 8 am and 7 pm, with a half-hour break every two hours;
- from seven to eleven years inclusive, twelve exemptions per year (twenty-four in special cases) could be granted for activities where the presence of children could be required for a maximum of six hours a day between 8 am and 10 pm, with a break of one half-hour every three hours;
- from twelve to fifteen years inclusive, the maximum number of exemptions was twenty-four per year (thirty-six in special cases), for activities where the presence of children could be required for a maximum of eight hours per day between 8 am and 11 pm, with half-hour breaks every four hours.

The Committee was satisfied that the above-mentioned regulations had remedied several legal loopholes which had been viewed with concern by official sources (the April-May-June 1992 edition of the quarterly review of the Belgian Ministry for Employment and Labour)."

In 2001 the Committee stated regarding Cyprus:

"Previously, the prohibition on night work for young persons only applied to industrial work. Section 8 of the law henceforth provides that no young person shall be employed in any occupation between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m. The new Section 8 also provides that the Minister may grant licenses permitting young persons to work at night "in the interest of art, science or education, during a public entertainment".

The Committee asks that the next report state whether problems have been encountered in implementing the night work prohibition. It also asks how the licensing arrangement is implemented in practice (number of licenses granted, revoked or suspended, applicable conditions, details on the activities for which licenses are granted, etc.). "

"However, a child may be employed at night in the interest of art, science or education, in any place of public entertainment, in accordance with the conditions of a license in respect of such a child, granted by the Minister of

Labour and Social Insurance who may, at any time, revoke, suspend or vary the conditions of such a license. “

Conclusion

It can therefore be concluded, that at international as well as at European level exceptions from the rule on minimum age of child workers being 15 years of age are possible in the entertainment sector.

But this opening for such a special sector has to be accompanied by restrictions to this exception to protect the health, moral and education of the child workers.

Those restrictions are on international level:

§ Strict limitations of working hours in a day and a week

§ No work after midnight

§ Work permits decided on a case to case basis

§ Special working conditions

And on European level:

§ Prior authorization based on the individual case

§ Special working conditions

The demand of prior authorization by the public authorities and special working conditions can be found on both levels.

C) Legislation in the EU member states and the accession countries

“The age below which work is forbidden differs in various countries.

Sometimes it is completely forbidden for young persons to work until they have reached school-leaving age, sometimes they can perform a moderate amount of work between a given age and school-leaving age, either generally, in certain professions (e.g. the performing arts) or by exception (...).”

An overview of the legislative situation regarding the work of children in the entertainment sector in the EU member states and Bulgaria can be found in the table below.

Unfortunately this kind of information is not very easy to collect due to the fact that the legislation or provisions on the question of child performers is extremely varied.

The implementation report of the Commission of Directive 33/94/EC is attached, giving the national provisions regarding Article 5 of the Directive.

This comparative overview shows, that a work permission is needed in 6 out of the 8 countries mentioned. Provisions on special working conditions are to be found in 3, restrictions due to education of the children are mentioned in 3 out of the 8 countries.

§ Belgium - Exceptions for children working as models, actors, singers, musicians, etc. Conditions to fulfill are prior written consent of the father, the mother or the guardian, written engagement, that the exemption will not have any detrimental influence on the child's educational, intellectual and social development as well as on his health and moral. These points fulfilled an individual exemption will be issued by the ministry of labour. For children aged up to + incl. 6 years: individual exemptions may be granted only when such forms of employment take place between 8 a.m. and 7 p.m., from 8 a.m. to 22 p.m. for the age of 7 up to 11, from 12 to 15 years of age between 8 a.m. and 11 p.m. Child's pay has to be transferred into a personal savings account

§ Bulgaria - regulation is in Art. 301, par. 3 Labour Code: "Persons under the age of 15 shall not be admitted to employment, except to take part in the artistic sphere in the making of films, in the rehearsal and presentation of theatrical, operatic, ballet, circus or other performances, subject to special conditions as are or may be prescribed by ordinance." There is emphasis on the establishment of a good state of health and also on the possibilities of a beneficial, moral + physiological development of this category of persons. Work must not be dangerous to the life, health and morals of the persons

§ Finland - jobs like Performers or assistants at artistic and cultural performances or similar occasions are allowed. Permissions may be granted.

§ France - regulation in L.211-6 Labour Code. Applicable to children in performance and specifically children working as models in commercials + in the fashion industry. Permits needed from the prefecture, Child performers do have employee status.

§ Germany- § 6 Protection Act of young workers - Theatre, musical performance and other performance and publicity events as well as radio, television and photography. Permission of the administration needed, this permission is related to many conditions. Regarding theatre: children over 6 years of age up to 4 hours per day between 10.00 and 23.00, All the other domains: children between 2 and 6 up to 2 hours per day between 8.00 and 17.00; children over the age of 6 years up to 3 hours between 8.00 and 22.00

§ Ireland - Protection of Young Persons Employment Act is valid. Licenses for children to work as performers by the Ministry.

§ Italy - Age lowered to 14 in the entertainment industry. Safeguarding in any case the fulfillment of the child's educational obligations, job allowed

only if compatible with health protection. Up to 15 years: max. 7 hours a day, not more than 4 1/2 hours consecutively.

§ The Netherlands - Bill of 1994. Cultural, scientific and artistic performances; amusement programmes. Permit of the labour inspectorate for children under 15 years, which perform in amusement + other programmes. Minister of Social Affairs and Employment may grant exemptions in the other cases. In each 24 hour period an uninterrupted period of rest of at least 12 hours, incl. period between 11 p.m. and 6 a.m.

§ United Kingdom - Public performances. Licensing authority is the Local Education Authority, appointing of a chaperone to supervise the child. Educational requirements + hour of work

D) Final conclusions

The Russian legislation fixes a minimum age to the age of 16/15/14 respectively, except in the entertainment sector, which is as such – seen the legislation on international and European level – not problematic.

The only protection/restriction to be found is the need of the content of the parents and the content of the patronage body – a local government institution.

The problem is that no further protection for the children working in this sector can be found in the Russian Labour Code. As shown above the international and European provisions counter balance the exceptional non existence of a minimum age in the entertainment sector with restrictions to the work of the children, with special working conditions and certain obligations on the employers.

To take the aspect of work permits, on international and European level permission from the public authorities is needed, decided upon on a case to case basis. This permission enables the States to have an eye on this kind of business.

In Russian legislation it is the consent of a local government body which is needed. But it is to question if the needed consent under Russian law is comparable to the idea of a work permit under ILO Convention No. 138. As the procedure for granting a permit implies not only the analysis of the individual case, but lays down as well special working conditions. The comparison of the legislation in some EU Member States showed as well, that the permission is granted only if certain conditions are fulfilled (Belgium, Germany) or that the permission is granted by high administrative bodies (Ministry of labour, labour inspectorate or Minister of Social Affairs and Employment).

Under Russian legislation the consent does not seem to be linked to any conditions, the pure consent given to the work of a child in the entertainment sector seems much weaker than the demand for permissions in the international and European legislation.

Further problematic points in the Russian legislation are the following ones:

There are no regulations on special working conditions for the children working in the entertainment sector.

The Russian legislation reduces the working time to 24 hours per week for employees below the age of sixteen; the daily length may not be more than 5 hours for employees between 15 and 16 years of age. The length of a working day for creative employees can be established according to federal laws and other legislative standard acts, local standard acts, collective agreements or labour agreements. So it would be very important to check, if no such provisions have been established.

What about children working in the entertainment sector younger than 15 years, may they work more than the 5 hours a day or do these 5 hours apply to them as well. For comparison the working hours in Germany as shown above are 2/3 or 4 hours a day for children under the age of 6 years.

Are the children up to the age of 16 really allowed to work up to 24 hours per week?

Night work is prohibited for employees under the age of 18 except in the entertainment sector. Here again no protection for child workers is to be found in the Russian legislation.

The ILO Convention No. 60 prohibits child work in the entertainment sector after midnight.

Compared with the Belgium legislation, children of 6 years and younger can only work between 8 a.m. and 7 p.m. and children between 12 and 15 years of age between 8 a.m. to 11 p.m. so even in the entertainment sector work after 11 p.m. for young workers is not possible.

So the Russian legislation not restricting the night work in the entertainment sector in any way, is not respecting the needed protection for young workers. It is in this point contradicting international law.

The demand for special working conditions can be found on both international and European level as shown above.

It can be concluded that the Russian legislation is not in conformity with international and European standards, seen that it does not foresee those protecting tools.

Therefore you could envisage going to court in Russia with a suitable case to fight the lack of legislation in this area and arguing with the contradiction between the Russian labour code and the ILO Conventions No. 60 and 138, which have been ratified by the Russian Federation, stressing the lack of the following restrictions:

- § Strict limitations of working hours in a day and a week
- § No work after midnight
- § Work permits
- § Special working conditions

You should also try to persuade parliament representatives to change the labour code in such a way as to get it into conformity with international and European labour law by adding provisions regarding limited working hours, night work, special working conditions and the need for more detailed provisions regarding a work permit of the public authorities, etc.

Sources:

§ Prof. Dr. R. Blanpain, International Encyclopedia for Labour Law and Industrial Relations

§ R. Blanpain; E. Köhler; J.Rojos (Ed.), Legal and Contractual Limitations to Working Time in the European Union, 2nd revised and updated edition, Office for Official Publications of the European Commission; European Foundation for the Improvement of Living and Working Conditions

§ Verdier, Coeuret, Souriac, Droit du travail, 11e édition, Dalloz

§ W. van Eeckhoutte, V. Neuprez, Droit du travail, tome 1, Editions Kluwer

§ Katherine Sand, Child performers working in the entertainment industry around the world : Analysis of the problems faced, International labour office

National Trade Union Contact

Federation of Trade Unions of St.Petersburg and Leningrad region, FNPR
Russia 190098

Saint Petersburg

Truda Square 4, office 89

Russia

Valery Safonov
Legal Responsible
Tel: +7-812-117 7267
safonov@lfp.spb.ru
bllp@mail.ru

EXPERT
Wiebke Düvel

Sponsored by



¹ Swedish International Development Cooperation Agency