



NON-TRADITIONAL LABOR RELATIONS: IN FOREIGN EXPERIENCE

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Article history:	Abstract:
<p>Received: January 10th 2023 Accepted: February 10th 2023 Published: March 11th 2023</p>	<p>The thesis questions argument that extending labor contracts to part-time, seasonal and temporary workers facilitate to diminish the rate informal employment in developing countries. In fact, the formal employment relies on many aspects of labor law; however, one of key components is the labor contract allowing individuals become workers. Therefore, this study looks for the most optimal types of labor contracts that can ease the process of formal employment. The research brings the practice of Uzbekistan and Italy on non-traditional contracts for workers. The research demonstrates current situation of labor law in Uzbekistan and comparative analyses between Uzbek labor law and Italian's labor law regarding part-time and temporary contracts. However, this research reveals that introduction of new types of labor contracts is not sufficient to enhance the whole situation of informal employment in Uzbek labor market. Overall, the hypothesis of this research demonstrates that flexible labor relationships through labor contracting which can promote transformation from informal to formal job creation and stimulate individuals to enter into the formal labor market in a consequence ensuring respect for labor rights of atypical workers.</p>
<p>Keywords: atypical workers, non-regular workers, labor contract, part-time contract, informal employment in Central Asia, Italian labor law, Uzbekistan labor law.</p>	

Uzbekistan developed from 1924 as a part of Soviet Union until it became an independent republic in 1991. Uzbekistan is the most populated country among other five republics in the Central Asia and peculiar fact is that one third of the population under the age of 29. Almost more than a half of that labor force dwelling in rural areas. Every year the number of people under the age of 29 joining to the labor market is 800 000, so enabling new job places for new graduates are important as well as difficult.¹ Unlike other new republics established in Central Asia after the collapse of the USSR, Uzbekistan started to build a new "Uzbek model of development" which is different from the old Soviet model of planning economy.²

Uzbekistan has a continental legal system, which adheres to codified system of law and the Labor Code of 1995 embodies the main labor laws. Uzbek courts first refer to the articles of the labor code in case of labor litigation. Article 74 of the Labor Code stipulates that labor contract should be made in writing.³ Employers must conclude a labor agreement/contract regardless of the type of employment. In labor contract basic features of the agreement are recorded and the contract should be signed by both the employer and the worker.⁴

¹ Asian Development Bank. Sector Assessment (Summary): Micro, Small and Medium-Sized Enterprise development. Accessed April 16, 2020

<https://www.adb.org/sites/default/files/linked-documents/42007-014-ssa.pdf>

² Shavkat Mirziyoyev (Шавкат Мирзиёев), "Free, Democratic and Prosperous State of Uzbekistan We will Build Together with Our Courageous and Noble People" (Свободное, Демократическое и Прцветающее

Государство Узбекистан Мы Построим Вместе с Нашим Мужественным и Благородным Народом), (Speech at the inauguration ceremony of President of the Republic of Uzbekistan, Tashkent, December 14, 2016). Accessed April 17, 2020 <https://president.uz/ru/lists/view/111>

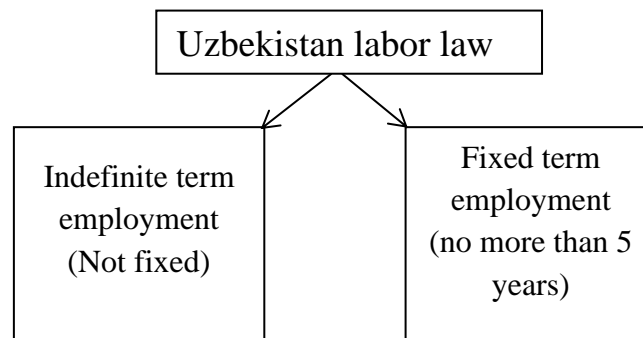
³ Labor Code of Uzbekistan. (Трудовой Кодекс Узбекистана). 1995. Accessed May 1. 2020 <https://lex.uz/docs/145261#145658>

⁴ Ibid.



Labor Code establishes two types of employment regular and non-regular.⁵ Regular employment means an employment contract for indefinite time, whereas a non-regular employment can be concluded for the fixed time, but not more than 5

years and for the duration of the certain job.⁶ The current Labor Code does not have any provisions to covering the part-time, temporary and seasonal workers.



This weakness of the current Labor Code derives from its history. Uzbekistan's Labor Code is based on three Codes of Labor Laws of the RSFSR, adopted in 1918, 1922 and 1972. It is important to note that all these Codes are not much different from each other. The Code did not have norms about labor contract. The Codes was just formality and actually not fully functioning at that time.⁷ Initially, these Codes applied to the territory of all Soviet republics. According to the Decree of the All-Russian Central Executive Committee of the Russian Socialist Federative Soviet Republic (RSFSR),⁸ all Soviet should introduce the Code of Labor Laws on their territory without changes.⁹ Soviet republics had to adopt the Codes as formality rather than a legal document to govern the labor issues. For instance, Soviet Uzbekistan adopted its Labor Code based on the Soviet Union's code (Labor Code of the Uzbek SSR 1929), after the transformation of the Tajik Autonomous Soviet Socialist Republic into a union republic in 1929. The Labor Code of the Uzbek SSR continued to operate in neighbor Tajik SSR.¹⁰

There are three factors to understand the impact of historical development of Soviet Union labor law to modern Uzbekistan labor law. First, Soviet economy and policy was amenable to systematically strengthening labor discipline, calling for ever greater efforts, but also offering carefully calculated incentives and privileges to workers in the vital branches of economy.¹¹ Therefore, modern labor code of

Uzbekistan lacks flexibility in employment issues thus did not cover the part-timers or seasonal workers. Labor Code is old and requires amendments. Old code cannot provide good regulations for the society. The current Labor Code focused mainly on large enterprises of traditional industries. Articles on employment are written for big state-owned companies with regular employment. The code was not aware of the development of small business sector that generates new forms of employment. Current labor regulation does not meet the realities of economic transformation in the country where informal employment expands. Second, legal basis of employment under Soviet labor law normally arise from work contracts between worker and State enterprise, which means employer is the State. However, in modern labor law relations prevailing concept of labor contract is between an employer and a worker. An employer is a legal entity, representatives of SMEs. Finally, in Soviet Union labor code did not include articles regarding the settlement of wage questions, because political regime requires equality on labor and wages, which was already fixed for all workers. In modern Uzbekistan most of those issues are now regulated by normative acts as laws and decrees. However, rates for wages of piecework are not clear when issues arise regarding the temporary workers or technically part-time workers. This is because Uzbek Employers decide the rates of wages on oral agreement

⁵ Ibid.

⁶ Decree of the Cabinet of Minister of Uzbekistan "On the Approval of Regulatory Acts Necessary for the Implementation of the Labor Code of Uzbekistan" (Об Утверждении Нормативных Актов, Необходимых для Реализации Трудового Кодекса Республики Узбекистан). 1997. Accessed April 25, 2020 <https://lex.uz/docs/517040>

⁷ Lyutov N.L. Actual Problems of Labor Law, "Prospect". (2017), p. 32.

⁸ Ibid, p. 26.

⁹ Ibid, p. 29.

¹⁰ Ibid, p. 38.

¹¹ Heller, P. R. Soviet Labour Law. "Soviet Studies", no. 4 (1951): 378-86. Accessed April 29, 2020. www.jstor.org/stable/149075.



and the rate may not be identified at the time of a dispute.

When Uzbekistan adopted the current Labor Code, it was considered as tentative one, assuming that the code will be amended in response to the further economic development of the country during the transition period. A number of provisions need to be revised based on the realities of today's reforms. After the collapse of the USSR most of post-Soviet republics during the 1990s developed and adopted new Labor Code; Turkmenistan in 1993, Uzbekistan in 1995, Tajikistan in 1997, Kyrgyz in 1997 and Kazakhstan in 2007.¹²

However, labor law did not update the provisions to keep up with the developing economy. Currently, labor law cannot provide labor protection for non-regular workers. Current Labor Code still includes former Soviet Union's labor regulation effecting to employment. Therefore, this thesis analyses: first is to explore the weaknesses of chapter IV, paragraph 2 "Labor contracting" of Uzbekistan labor code of 1995, in order to expand formal contracts to part-time and temporary workers, and facilitate flexibility of labor contractual relations according to requirements of labor market. Current Labor Code does not cover part-time and temporary workers issues.

All four post-soviet republics adopted independent labor codes, however, the concept of the codes were formal document. After the collapse of the USSR economic condition of the republics were in transition period. Economy was not stable, where had an effect to other spheres of society. Republics enacted formal labor code deriving from old Soviet codes. New codes were not the result of countries labor experience.

Flexible labor legislation by expanding through part-time, temporary and seasonal contracts, can promote formal job creation. For SMEs, part-time and temporary contracts and agriculture seasonal workers contract can be appropriate to cope with unexpected fluctuations in demand. Replace permanent staff on holiday, maternity, or sick leave. In addition, hire workers with specialized skills to carry out specific time-bound projects. For workers issues, particularly women in rural areas and youth engaged in new forms of employment in big cities formal part-time and temporary contracts can provide opportunities for those people, who might not have been able to access employment under a permanent contract, help workers' desire for flexible contractual agreements while also being protected by social security benefits. Student employees, who are studying or mother raising children, or generally managing other duties part-time and

temporary contracts through diversity of labor contracts are the proper solution to facilitate workers to enter in to formal economy, cover by labor law security during the transitional economic period in modern Uzbekistan.

Next chapter examines Italian individual employment relations based on Italian labor law legislation. This chapter identifies dissimilarities between Uzbek labor contract and Italian's provisions on employment of atypical workers as well. The objective of the chapter is to inform the reader which labor regulation is more flexible and secure for atypical worker.

The Italy became as Italian Republic because of a referendum in 1946. The Italian Parliament approved Italian Constitution in December 1947 and came into effect on 1 January 1948.

Labor rights in the constitution are impressive. It contains some declarations of principles such as Italy is a democratic Republic founded on labour, which may stand for as a major fundamental rule. The next ancillary norm that the Republic recognizes to every citizen the right to work and protects work in all its forms and applications, fair pay, the maximum working hours, the weekly and annual paid vacation, right to strike.

Furthermore, Italian labor law comes from various sources :

- a) European and international treaties, laws and conventions;
- b) Constitution and domestic laws;
- c) Collective bargaining agreements;
- d) Individual employment contracts;
- e) Custom and practices

Although case law precedents may have a significant role in orienting both interpretation and application of Italian labour law and regulation.

In Italy there are two big categories of labour contracts: employment contract and self-employment contract. The Civil Code defines both of them.

Art. 2094 provides that an employee is a person who undertakes to collaborate in a company through remuneration, by providing intellectual or manual work; employed by and under the direction of the employer.

Art. 2222 defines self-employment worker as a person who undertakes to perform a task or service using predominantly his or her own labour without any link of subordination.

The reason why the distinction is very important is that self-employment workers are excluded from the protection of labour law in terms of rights: such as rights of fixed retribution, paid holidays, parental leaves, working time, salary increase due to the length

¹² Tomsheskiy K.L. "Essays on labor rights" (Очерки трудового права). BGU Center, 2009. p. 47.



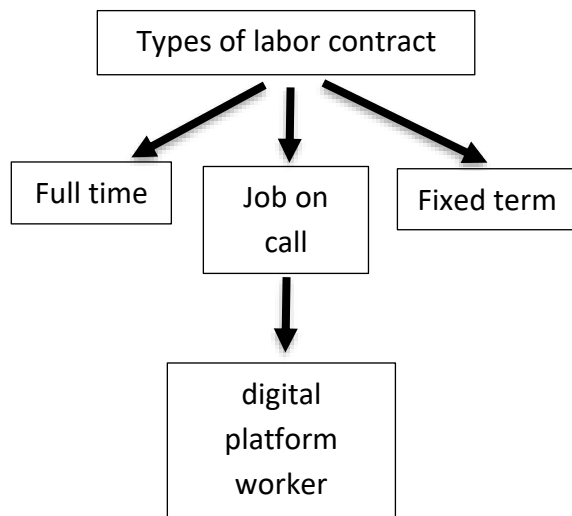
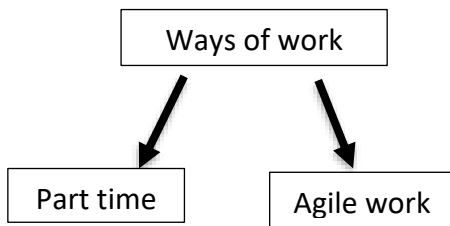
of service, severance pay and social security contribution, termination in case of just cause or economic reason.

The most relevant *criteria* to distinguish one type to the other one, according to the case law are:

a) subjection to employee to the exercise of managerial, organizational and disciplinary power of the employer;

- b) the continuity of the relationship;
- c) the method of payment of the remuneration;
- d) working hours;
- e) daily presence of the employee in the structure and the organization of the company.

The reasons why in Italy there are many atypical labor contracts are the flexibility and cost savings for companies.





The fixed-term contract can be part-time or full-time and has an end date. Once expired, the fixed-term contract can only be renewed once for a period that cannot exceed the initial contract. In addition, the total duration of the contracts must not exceed three years. For example if the initial fixed-term contract has a duration of 3 years then it is not possible to renew it. The new Italian legislation simplifies the employer side. Indeed, it is no longer compulsory for the company to justify the use of a fixed-term contract of less than 12 months. Thanks to this novelty, the employer has no longer to explain why he needs an employee for a specific time only. In Italy, companies cannot have more than 20% of their employees on fixed-term contracts.

"Job on call" contracts provide that an employee declares his/her availability to work over a certain period of time, during which he/she can be called in even for a few days only with short-term notice. The individual contract may provide that the employee is bound to work if called by the employer. In this case, in addition to the normal remuneration paid for the working activity currently carried out, the employee is eligible to an additional 20% of the wage set by the national collective agreement.

Part time is not really a separate type of job contract. Part time workers should not be discriminated against compared to the full time workers with regard to the remuneration and regulatory treatment. The hourly wages and paid holidays are therefore the same as those of the full time worker in proportion to the time worked.

Smart working is about a mental attitude that transforms the employee's role. Furthermore, smart working goes hand in hand with new technological innovations and the possibility of adapting more and more professions to remote working methods. In particular, Law 81/2017 on smart working defines "agile work" as a method of execution of the employment relationship established by means of an agreement between the parties. Companies and workers can establish the organization of work by phases, cycles and objectives without precise constraints of time and place of work.

The Coronavirus emergency that has affected Italy as well as the rest of the world has brought out all the potential of smart working, prompting companies and institutions to adopt this way of working in a very short time. Never before agile work has found such a wide application as in this moment, however, given the emergency, some regulatory gaps also emerged that needed further adaptation and updating.

The case of "digital platform workers" has been the subject of a lively debate in Italy in recent years, most of all after the pandemic of Covid 19.

Italian courts have reached different outcomes regarding the employment status of digital platform workers however, a recent case of the Supreme Court decided that a Foodora rider is to be considered as an employee organized worker and thus be covered by labor law.

The decree no. 101/2019 on "digital platform worker" includes some rights: transparency, information, fixed hourly wages, anti-discrimination, data protection, occupational safety and health provisions. These provisions are to be considered as the default rule in the absence of any collective national agreement in this area.

To conclude, Uzbekistan needs to revise the current labor legislation regarding fixed-term employment contracts and conduct a strong labor policy to protect employment rights of workers under such contracts. Labor Code needs improvement and harmonization in accordance with the current liberalization movements in Uzbekistan. New types of labor force emerged to the labor market, whereas Labor Code cannot provide legal employment.

This research has found that the current labor code does not cover part-time, temporary and seasonal workers rights. Neither Labor Code nor derivative norms has provisions regarding the non-regular employees. Comparative analysis between regular and non-regular workers in Uzbek legislation and comparative analysis with the developed countries labor law identified several drawbacks in the legislation. Labor law cannot provide labor security, social security and insurance of the members of the labor market.

Current Labor Code is old to keep up with the economic development. New labor emerging to the labor market, yet Labor Code cannot create new job places. Regulations in the Code are serving to save the job places instead of creating new ones.

Meantime, Italian's labor law is more flexible and secure. And individual employment relations have diversity of contracts to simplify employment and give more opportunities for worker to access into labor market.

To summarize, in order to introduce the part-time and temporary contracts to Uzbek labor law, legislation has to provide the legal rights of part-timers, afterwards organize protection of part-timers rights. Along with regulations develop supplementary institutions to support part-timers during the work.

The limits of this article have framed the research area around only the contractual relations. However, the problem with diversification of labor contracts is not the only issue in the realm of part-timers. The research leads to a bigger problem – protection of rights of the atypical workers.



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