Social Rights in Russia

A. Russia in the Transformationsprozels

The Transformationsprozels in the former Soviet Union introduced by the choice of Gorbachev to the Generalsekretar of the CPSU in the year 1985. With Gorbachev the reform that began economically and politically verkrusteten structures and more singularly more socially Umgestaltungsprozels. Perestroika and Glasnost characterize key word-like this change. In the first time it went "only" around the renewal within the socialist system, more spater socialism altogether into question was placed. At the beginning of of 1990 came it in the Soviet Union - the power of the CPSU eroded sequentially - to the Grundunge of a "democratic platform", more spater also to groJén demonstrations. The driving role of the communist party was eliminated to 14.03.1990 and introduced in October 1990 the Übergang to a multi-party democracy. In August 1991 Yel'tsin jerked putsch after the mi3gluckten in the center of power. In the subsequent years the zwischzeitlich begrundete Russian Foderation was aulérst relating to domestic affairs unstable, whereby right and radically left-wing Krafte the Stabilitat of the political development gefahrdeten. Only with the re-election Yel'tsin to the Russian Prasidenten in June 1996 is the economic and political Reformprozels einigermaIén guaranteed.

Aulénpolitisch was introduced the decay of the Federal State Soviet Union begrundeten after the October Revolution in the year 1917 with the Souveranitatserklarung Rul3lands to 12.06.1990 and sealed to 8.12.1991 with the Abschlul3 of the agreement more über the Grundung of a community Unabhangiger states.

B. Basic conditions for the arrangement of the system of social security

I. Constitutional framework

1. Emergence history of the Russian condition

Already to 16.06.1990 a Constitutional Commission was used, which prepare on the one hand the creation of a new condition and on the other hand the then valid condition überarbeiten should. This double setting of tasks führte to some frictions. It succeeded to the Volkskongrel3 of the USSR despite all that to work-separate in the summer 1991 a Übergangsverfassung in which in particular the state-organizational distribution of power between President and parliament was regulated. The distribution of power between President and legislation führte in the following time to substantial condition conflicts. In the future to presented condition draft found not least because of these authority problems no Majorities; only a Kompromil3vorschlag from of the parliament and of the Prasidenten präsentierten Entwürfen found in the Verfassungsgebungsprocedere the necessary majority. The Bestatigung of the condition was connected with substantial constitutional problems, which are not erlautert here können.

2. Socialright-relevant condition standards

The current Russian condition contain extensive social warranties. Is of special importance zunachst the welfare state principle, which in art. 7 of the condition is laid down. When defining of the welfare state principle it concerns an innovative Erganzung of the otherwise already traditionally extensively formulated Russian conditions, which did not know a such principle.

Remarkably however, da3 is in the state fundamental standard of the art. 1 of the Russian condition the welfare state principle is not erwahnt. The constitutional law giver decided thus fur a middle course: On the one hand it wanted grundsatzlich a Kodifikation of the welfare state principle, this should however on the other hand not in lifted out place into the rank of a state fundamental standard be lifted. Kind. the welfare state principle concretizes and guarantees 7 exp. 2 certain social services and achievements of the state e.g. minimum wages and the Gewahrung of a national old-age pension, whereby it acts here over by program sentence. Extensive social regulations are addressed in chapter 2 of the condition, which contains the rights and liberties of humans and the Burgers. As well as after art. everyone has 37 exp. 3 the right to work on conditions, those the demands of security and hygiene ensprechen the right to protection from unemployment. In contrast to the socialist condition from the year 1936 thereby the condition context no right to work laBt itself inferring. Rather da3 the russiche condition only a right to protection against unemployment results einraumen willl from the general context of this condition article.

Kind. an extensive warranty of social security plans 39. In the einzelen the social supply at the age, in the medical case, with Invaliditat and in other legally regulated traps is aware of-carried out for everyone. After exp. 2 of this condition standard the national old-age pension and social welfare assistance are regulated by law. GemaB art. 39 exp. 3 are demanded the freiwillige social security, Grundung of zusatzlicher forms of the social supply and welfare. Kind. 41 the right to preservation of the health as well as to medical supply gewahrteistet. After sentence 2 this free medical supply of the Burger in state or local institutions of the health service is financed from means of the appropriate household, insurance contributing and other incomes.

With the extensive Kodifikation of social fundamental rights the new Russian condition knupit on to comparable standards from the socialist Vorgangerverfassungen. The Auffiahme of social fundamental rights was suggested in all Verfassungsentwurfen. Reason hierfur is the high acceptance of social fundamental rights in the view of the Russian Bevolkerung. With taken up constitutional provisions it acts the schliel3lich in opinion (western) condition expert over bloll Absichtserklarungen by program, from which no concrete warranties can be derived.

BegruBenswert is however, daB the new condition text in socialism publicised strongly egalitare tendency does not uberommen has. A egalitare gleichmacherei lal3t do not infer themselves
from the now valid condition.

Even if the legal penetration appears problematic more socially partner-genuine, then nevertheless in the jurisdiction of the Russian constitutional court the fundamental right took an important value on social security. In several jünger decisions the constitutional court took position to the welfare state principle.

II. Ökonomi framework

The reorientation of the socialist command economy toward free-market economy was created with the government program of the Russian Federation. This Prozel3 was introduced by the price release in January 1992, the beginning of the privatisation and the creation of numerous restaurant laws. Despite these

Ausführlich for this NuBberger, in welfare state principle and in the social fundamental rights contained social Komponent in the Russian condition of 1993, ZIAS 1994, 213 (225).

' #SYMBOL f "Symbol"176 Schweisfurth, the start of the constitutional court barreness in Rußland, EuGRZ 1992, 28 ff; Hard TIG, constitutional court barreness in Rußland. The third approach, EuGRZ 1996, 177ff.

', Nußberger, the fundamental right on social security in the jurisdiction Russian reform steps still stands the Russian Federation before substantial challenges. To the substantial ökonomischen problems those pays the extremely high inflation, a substantial production jerk course - which was to industrial production in the year 1994 more than 50 % under the level of 1991 - and the obsolescence of the industriellen work-turns out. The level of development of the Russian economy is to the Czech republic under that and Hungary and easily more über the level of development of Poland.

Problematic are further the uncertain political basic conditions. Fur makroökonomische decisions is precarious the missing exclusive authority of a national Entscheidungsträgers. Duma, individual Ministries, the Präsident and its advisors obstruct themselves häufig in the definition of economical meaning basic decisions. The Russian economy has to kampfen not least because of these still insufficient basic conditions with substantial problems; lately however groups of reforms seem to become generally accepted. This reform will "is honored by promised credits of the World Bank" in the meantime also.

C Überblick more über the system of social security

I. Historical development of the social security system
1. Beginning of social safety device

For at the beginning of social safety device are appropriate in Rul3land still in the tsarist system. 1912 were begründet an obligation insurance für worker, who planned a protection für most social security risks and by employer and employee contribution was financed. Lenin demanded in its programs a Gegenmodell of the social safety device, which planned a national insurance and a central national Trager. In the years after the revolution this program was carried out to a large extent.

Starting from 1933 the administration of the social security of the trade unions became übernommen.

In this time was abhängig the achievements of social security of the industrial conscription of the Soviet Burgers. The obligation of the Burgers to the work correlated with the appropriate obligation of the state to the Gewährung of appropriate social security benefits. The social security benefits of the work geleisteteten in each case were abhängig; for this reason certain groups of employees were granted privilege. Special services received about (heavily -) workers and top places in the party.

2. Social safety device in socialism

The Russian social security right was at present socialism model für the social right of the other socialist states. Into the 50-iger years würden copies the element of the Russian social right of the satellite states. The kommunist social security system läßt by some grundpfeiler characterize themselves. Zunächst once by the right to work, which could be easily achieved in planned-economy systems. Secondly by system of "free achievements" as for instance a free health system. As third columns is still the Unterstutzung für basicneed-good to be called. The social security system marks itself more darüber outside by a national financing and by the Begründung of special systems für determined occupational groups. Achievements were protected increasingly egalitar.

The social safeguard net corresponded to years until far in funfziger years into the drei-/ger the basic gene specified. Only under Khrushchev the Russian social security system and in particular the pension right were partly reformed. The achievement-high was raised. The total expenditure für social expenditures erhöhte itself on 26 % of the BIP in the year 1987, was thereby however under the portion of western states. Reason hierfür were among other things comparatively high expenditures für the militarischen range and the space research

A crucial meaning für social security had in the Russian social right operational social mechanisms. The enterprises have not only classical sociallegal tasks übernommen (for instance in grollen enterprises the health care), but darüberhinaus numerous further social achievements: Dwellings, kindergarten, Krankenhauser, cultural centers, cafeterias, vacation mechanisms and sanatoriums. A Einschränkung of these operational mechanisms is demanded from many sides, since these are still eligible for financing hardly. On the other hand these
social mechanisms the connection of the employee to the enterprise erhöhen, besides the social security benefits stand in the business freedom of choice. Altogether they are to be judged therefore differentiated and not be condemned anyhow overall.

3. Social safety device in the transformation

Substantial targets for the range of the social politics result from above the government program already ervahnten to the economic policy. Dananch are intended among other things special allowances for the Empfänger of social Unterstützungen. Further became the pensions of that abhängen at the given time existing own resources of the pension fund and the social security fund. The government will subsidize this Fondes and will not erhöhen the rate of contribution, nor it will continue to lower the pensionable age. The individual branches of social security were substantially umgekrempelt after 1989; with the Arbeitslosenunterstützung and the social welfare assistance besides new insurance systems were created, which were unknown in socialism.

II. Überblick and organization of the social politics

The range of the social safety device was separated from the national budget and on social security fund upper stretchers. In detail pension funds, social security funds, Beschäftigungsfonds, health insurance funds and a fund fOr social safety device were created. The financing of the tasks of social security takes place through contribution and taxes. Social insurance contribution take place to a part from employer contributing, überwiegenden far, employee contribution fall beside it not in the weight. The Zuständigkeit became partly - for instance within the range of the health service - from the centre government on Gebietskörperschaften übertragen. Also of the enterprises social mechanisms, which took a substantial extent, were überfuhrt on local Trager.

Since November 1992 also private insurance companies are certified in the Russian Federation. Insurance objects konnen after art. 4 of this law also personenversicherungen its; in detail the konnen life, the health, Erwerbsfähigkeit and the old age pension insurance insurance object its. The range of these insurance is at present however still quite modest.

D. Representation of the individual branches of social security

I. Health service

1. The socialist health service

The Soviet health system was model fur the health systems of the other socialist states. As a result of the change of the Soviet health service the other States of the Soviet " unit model " übernahmen and gave their respective national characteristics up. Characteristically fur socialist health system is the comprehensive expansion of the protection on all inhabitants and
the financing from the national budget. Special health systems were only created for the Streitkrafte.

As the first approach place in the case of an illness not a family doctor was intended, but an investigation in a health center. If necessary the patient to a specialized clinic or a Universitatskrankenhaus could überwiesen to become.

The structure of a health system towards generic term in the Russian policy high Priorität. AulSerer expression hierfür was for example a high physician density, if this did not mean also a qualitatively high-quality health care automatically. All contributions of equipment within the health range were free, medicaments müSten to be however paid. In the course of the transformation those became obvious lack socialist health concept in all Eastern Bloc countries, whereby the weak ones resembled each other.

2. Reform of the health service

With the law more über the health insurance of 28.07.1991 was introduced the reform of the health service. Since that time countless laws, regulations and Richlinien were issued. A law is of special importance from the year 1993. In this law the organization and financing of the health service were again regulated. Since that time the health care is financed from the Staatshaushalt and legal and private health insurance companies. Since that time the health care is financed from the Staatshaushalt and legal and private health insurance companies. Since that time free achievements receive only the subscribers from old-age pensions, Kriegsbeschädigte and children under three years. Health-political decisions are made by the Ministry of Health, to which about contribution to the health insurance specifies or more über the permission of medicines decides. free achievements receive only the subscribers from old-age pensions, Kriegsbeschädigte and children under three years. Health-political decisions are made by the Ministry of Health, to which about contribution to the health insurance specifies or more über the permission of medicines decides. These health-political defaults are converted by the Russian Regionalkörperschaften.

Also the financing was again organized. As finanzierungsquellen now the national budgetary appropriations of the Gebietskörperschaften come, health insurance contribution and numerous different financially not into the weight falling sources into consideration. By insurance contribution that legal health insurance are 50 % of the expenditures resulting in the health service to finance. Interestingly enough insurance-stand with the health insurance companies however not as generally öfflich of the Arbeinehmern, but of the employers locked. This schlielSen as insurers besides with the health insurance companies stand more über the supply level of the insured ones off. Those Health insurance companies again schliellen off stand with the achievement hereditary leistungserbringern.

Even if the Russian health system on the paper looks modern and practicable, the Realität represents itself however more ernüchternder. Privatarztliche achievements are no longer affordable für numerous Sowjetburger. A rising Mortalitätsrate is visible expression of
substantial problems. The legally given reforms by the Ministry of Health, whose efficiency lacking is bemangelt, not sufficiently converted, thus daal3 some tasks dern privatisation Ministry ubertragen are.

II. Old-age pension 1. the valid pension system

The most important component of the Russian old-age pension is formed by the legal pension, even if already since 1990 supplementary allowance systems e.g. the pension-pension pension are certified. Also private pensions are certified since Erlal3 of the Prasidentendekretes from December 1991. Beside the national old-age pension a so-called national insurance pension is intended, which applies fur those, which no requirement on a age -, invalid or Survivor's pension have and zusätzliche conditions erfullen. The expenditures fur the pension range amount to 5-6% of the BIP. The general age limit amount to at present fur Mrs. 55 and fur Manner 60 years. This preferential treatment of the women regarding the pensionable age (as also with the Beschäftigungszeiten) still originates from the socialist pension systems; this disadvantage of the Manner was considered and is partly still considered as reconciliation fur the double load from occupation and Kindererziehung. Remarkable is besides the legal pensionable age low compared with western states, which lies by comprehensive Fruhverrentungsmal3nahmen do essentially still importantly lower. The national pension is paid from means of the pension fund. Employers and employees are contributory, wobi the rate of contribution 1996 fur employer 28 % of the employee gross salary and fur employee I % amounted to.

To be judged critically mul3 both relatively and absolutely seen auBerst in particular low pension level, which is disbursed despite high contribution loads to the pensioners. Due to the low pension achievements many pensioners are threatened in their existence. Because of the earnings-referred pension the pension supply offers to badly haufig an insufficient financial protection earning employees. A reason for the low pensions is appropriate for low pensionable age in that comparatively außerst; in particular the Fruhrenten was taken in Rul3land extensively in requirement. Besides are those Pensions on privilege basis too bemangeln. 1975 2, 2 % the pensioner a privileged premature pension, already 1987 6, 8 % received. to problematic are also the Zahlenverhaltnis between Rentenempfangern and payers-in, which in the nachsten years due to audience compositions still far others becomes. Altogether become therefore - if the pension system is not fundamentally geandert - the financing problems fur the Russian old age pension insurance a threatening Ausmal3 to reach. from more increasingly sedeutung fur the arrangement of the Russian pension system is also the iurisdiction in particular the constitutional court. This referred in a decision of 6.6.1995 to the question position whether a " obligation exists arranged length of service border to the pension " in the case of one gesetzlicher. In another decision the constitutional court judizierte more uber the disbursement of the pensions protecting the time of the arrest. In the Urteilsbegrundung refers to the court, daal3 the pension a requirement acquired by payment of dues characterize and from the national insurance pensions to distinguish am. The latters did not exhibit a direct connection to work or another socially nutzlichen Tätigkeit. At these decisions in particular the argumentative inclusion international legal instrument is remarkable.
2. **Age poverty**

The TransformationsprozeM meant fur most Bevolkerungsteile into all transformation e in special mostly also financial conversion and challenge staaten. if during the representation of the Russian social right the age poverty is particularly emphasized, this does not mean, dab it a problem in other Bevolkerungsgruppen and other transformation states do not give. Rather it concerns in Rul3land a particularly significant problem.

The reason fur in the first years the increasing age poverty is appropriate zuallererst in it begrundet, for dal3 by the increasing number of the Fruhverrentungen fur the old-age pension to International revue fur social security 1991, 49 (55). joining standing distribution mass sank. Besides already the average pension was in the comparison to the average wages clearly lower in the former USSR. Zusatzlich was increasingly cancelled the value of the pension by an unsatisfactory indexation with a at the same time extremely high inflation. Aged women (in particular widows) are particularly concerned, whose was still zusatzlich cancelled anyway small pension by the galloping inflation. The situation still difficult by the fact, dal3 the Russian social-genuinely only an insufficient social basic safety device plans. Even if in the meantime two funds were furnished to the Unterstutzung of the Bedurftigen, then nevertheless this Mal3nahmen the do-material problems does not become by any means fair. In the context of the social welfare assistance after a Bedurftigkeitsprufung contributions of equipment are protected. Since Erlal3 of the Prasidentendekretes of 14. 12,1994 the Foderale fund is financed fur social security device to 10 % from Privatisierungserlosen.

3. **Reform of the Russian old-age pension**

Already since beginning of the transformation by western side a reform of the Russian pension system is in particular demanded. First reforms were brought to the transformation in the initial years on the way. By a law from the year 1990 for example the presuppositions for claim were geandert fOr the pension purchase. In August 1995 with a government regulation the first steps were introduced to a fundamental structural reform. These reform steps are to become fair the condition times leagues Verburtung of the right to social security at the age. The valid pension system is to be made eligible for financing thereby to free market structures angepal3t and. In detail the following reform step is intended: The zukOnftige pension system should be three speed auLgebaut. A ground rent, which is to be carried out unabhingig by any payments of dues, is zunachst the subsistence level to guarantee and before risks such as Invaliditat and a reaching of the pensionable age schOtzen. A Hinzuerdienst is impossible beside the purchase of the ground rent. On a second stage this ground rent is to be erganzt around a beitragsabhangigen part. This beitragsabhangige system is to seize all abhangig BeschafHtigen. In this contribution system the at present particularly extensively regulated exceptions are to be eliminated fur certain occupational groups. Further the pensionable age is to be raised, which is regarded however at short notice as precarious. Planned however a gradual rise of the pensionable age is up to the year 2020. The high one of the pension computes itself after the
time-period of insurance and performed contributing. At present earnings/services become in the last five years before as assessment basis of the Besídes a supplementary allowance insurance is planned as a third state, whereby of the structure of a company pension scheme, in addition, of private additional insurance systems one thinks in particular.

The change of the pension system múl3 to be unterstutzt by reform of the administrative structures. As a supervisory body further the work and Social Department are to function. In addition, besides employers and representatives of the insured supervision rights are to receive.

III. Unemployment insurance

1. Job market open unemployment was not no more proven in the former USSR since 1931. The Phanomen unemployment " was gone around " by social Beschäftigung, i.e. by Beschäftigung below the qualification level or by a work according to the qualification, but without continuous productive operating phases. With beginning of the transformation process unemployment was also officially determined, whereby the unemployment ratio of the Russian Föderation differs depending upon statistics. End to March 1995 amounted to the number beo the Föderalen labor camp registered unemployed person 2, 3% the Erwerbsbevölkerung, more realistic studies go out however with an unemployment ratio with 7, 5%. The work ice lot ratio is thereby below the average of the European Union states and lower than in most central and to osteuropaischen states.

Thereby in particular small long-term unemployment is remarkable. Which are now reason für the comparatively moderate unemployment ratio, in a country, in which one in view of the economical Development on an unemployment ratio hoheren far to count became? Zunächst once was avoided to a large extent in the course of the privatisation the actually necessary " release " by Arbeitskraften. Reason hierfür are multiform. On the one hand the form of the privatisation is jointly responsible, since each privatisation of an agreement of the work collective zusammenhangt. On the other hand some entrepreneurs could have an interest in a high schaftigungstsad, since they used the threat m it e of iner mass redundancy politically more gegenüber the Gebietskörperschaften können. As the second substantial reason soziokulturelle reason are to be called, which lie in the worker accumulation resulting from socialism. Schließlich was allowed also a flexible wage policy and partly at least to the Produktivität oriented wage-high to low unemployment to have contributed. The wage-high `-vurde in the first years wage auxiliary tax, waived by one is eingeschränkt which however 1996. As consequence of the worker accumulation specified above the Arbeitsproduktivität is comparable in the Russian Föderation not with in westeuropäische states. To a substantial part PSE the missing (mass) Kundigung also only postponed and not endgültig waived its. Ungünstig is into the Russian Föderation the Beschäftigungsstruktur. Protecting for instance in the Federal Republic of Germany only 3, 6% the Beschäftigten in the agrarian sector works, is this in Rußland 13.4% the Gesamtbeschäftigungszahl.
2. Unterstützung of the unemployed person

A requirement unemployment pay is protected after MaDgabe of the Beschäftigungsgesetzes fur one period by max. 12 months in one time period by 18 months, if the requirement period is not verlangert due to special reason. The high one of the unemployment pay amount to in the first three months of unemployment 75%, in the nachsten four months 60 % and in the time 45 % of the average wage obtained following on it before the entrance of unemployment. These payments from the national fund are financed fur Beschäftigung of these again carry from contributing the employers (1, 5 % of the employee gross salary).

Beschäftigungspoliti MaMnahmen is financed from the national fund fur Beschäftigung. The extent of the active job market-referred MaBnehmen was continuously extended. Primarily vocational education courses are organized.

3. Basic conditions for the job market

The privatisation of the state property was introduced by the law of the Russian Foderation more uber the privatisation of national and munizipaler enterprises. The privatisation took place zunachst uber Voucher, further more uber the free sales of national enterprises. Zunachst art. is job market relevant 20 exp. 1 of the privatisation law, according to which an advertisement is to take place, if to the acquisition of the Unt-rehmens special conditions are geknuptt. For this pay in particular obligations regarding the Weiterbeschäftigung of Arbeitskraften as well as the Ubernahme of social warranties, whereby the point secondarymentioned in kind. one concretized details to 26 of the law. This privatisation law was erganzt by national programs. The state program fur the privatisation at the beginning of of 1992 has those legal defaults taken up. With the state program fur the privatisation from December 1993 and of 1.07.1994 was continued the privatisation come in the meantime into coming to a hold. By the privatisation the quantitative Verhaltnis between private and öffentlichen employers geandert itself crucially. Since that time 60 % the Beschäftigten arebeschäftigt in the private sector. Also insolvency-legal regulations were already created in a comparatively fruhen phase of the economic system change. Vorganger of the insolvency law was a Prasidialerlal3 of 14.6.1992 more uber "Mali-took for the Unterstützung and reorganization of zahlungsunfahiger enterprises and more uber the application of special procedures ". To 1.3.1993 in strength stepped insolvency law becomes a new regulation yield. The insolvency laws had however so far hardly practical effect. So far 250 case was only gepruft judicially, of which only the Halfte was judged as insolvent.

E. Resumee

The Russian social juridical system was considered to many western observers into the 70-iger years, when allmahlich tears became visible, as exemplary. Spatestens with beginning of the transformation is however the lacquer off. All branches of social security were not compatible with the new economic and company form, were economically inefficient and lay in their achievements far behind the average western standard zuruck. A transformation Russian social
security right was thus inevitable.

A überzeugender change of the Russian social security system did not succeed however so far yet. Even if some lack may be nachvollziehbar due to the extensive challenges, then the sluggish speed of the change is not least in compared nevertheless to other Transformationslandern remarkably. In particular the condition of the old-age pension is insufficient. Diesbezüglich rightfully urgently a reform is demanded by international organizations. In addition, the health system proves as insufficient. Verhältnismäßig well works however the Russian job market, even if the statistics deliver an easily distorted picture.

In jungster time the promised credit of international organizations was made partly of the Durchführung by social reforms abhängig. so stop the World Bank the reform of the pensions, of the so law of the Russian Foderation more über the Zahlungsunfähigkeit of enterprises of 19.11.1992, VSND RF 1993, NR. I, position 6; in addition drunkenness, at the beginning of a Russian insolvency law, Wiro 1992, 279ff.s ' the Duma accepted at the end of of 1995 a bill for the reorganization of the insolvency in the first reading.

Child benefit, the Arbeitslosenunterstützung, the FOrsorge, the maternity protection and the treatment ill employees fur necessarily. Mogen also these concrete defaults of international organizations politically undisputedly its, then do not demand them nevertheless the consistent change of the social security system.