Modernisation of the Lithuanian Labour Law

by Daiva Petrylaitė

I. Lithuanian labour reforms in times of economic crisis

The coalition of the right and centre party that came to power in autumn 2008 at the outbreak of the financial crisis faced a poor financial and economic situation. After almost half a decade of fast growth of the economic and social standard, the deficit of the state budget and of the budget of the social insurance fund began to increase rapidly. The coalition viewed the general tightening of spending (reduction of the social standard) and creation of an economic environment favourable for employers as the main instruments to improve the situation. Therefore, the Programme of the Government of the Republic of Lithuania set the goal of taking urgent action to liberalise labour relations. Under the Programme, the Government assumed the commitment to observe the principles of the *flexicurity* (the example of Denmark) strategy and assist in creating a competitive workforce. The Programme devoted considerable attention to this issue, but the main goal was given just a brief mention – modernise labour relations regulation and increase flexibility.
In order to rescue national public finances, the Government soon initiated the adoption of an ambitious package of amendments by cutting public spending and increasing a number of taxes, which were adopted almost overnight. The latter evolved into protests organised by social partners and even resulted in the riot of 16 January 2009, which became an extraordinary event in a society which is particularly disinclined towards protesting or holding strikes. The control of public order, though lost only for a short while, which was of crucial importance for the original plans of the Government to reform the legislation of the social sphere – the Government shifted from an ambitious one-sided rhetoric to more moderate proposals and dialogue with social partners. The standpoint of the Government with respect to liberal provisions was softened to the same extent as the willingness of political parties in power not to become involved in conflicts with the social partners increased. Consequently, two laws amending the Labour Code were adopted over the period of four years and are highly different both, as regards the circumstances of their adoption, their term of validity, and the number of norms liberalising labour relations.

The 2009 amendments to the Labour Code

Only a part of the proposals of the Government concerning liberalisation of labour relations was implemented. Instead of radical permanent decisions, only minor amendments were made to certain provisions and were expected to remain in force for a very short period. Their effectiveness was also diminished by the fact that responsibility for putting them into practice fell on the parties to collective agreements. The practice showed that it was naïve to expect that a large number of such collective agreements would be concluded and they would change the look of labour law.

2010 - Outcome of social dialogue

The 2010 supplement to the Labour code provides for a new possibility, namely, the right to unilaterally suspend an employment contract for a period of up to three months, subject to giving a

written notice to the employer three days in advance. Interestingly enough, these norms are quite strict with regards to employers. Thus, the employer is required to pay the employee compensation in the amount of the minimum wage for each day. The true essence of this amendment may be completely different – to enable employees to use this instrument of individual self-defence in place of a collective sanction, namely, a strike. The procedure for calling a strike is rather long and complicated; hence, a temptation arises to use co-ordinated suspension of an employment contract where the demands raised are of a legal nature.

2011 – Legitimation of the new form of employment – temporary work

This year, the initiative should be seen as the adoption of new law on temporary work. This employment form was practically known for about ten years in Lithuania, but it was legalised only in 2011. During discussions in the Parliament, the opinion of social partners principally separated. Therefore, the new copy-paste law repeated the provisions of EU directive. As more original could be mentioned only one provision - mention could be made of an exemption from the principle of equal pay for workers who have a permanent contract of employment and who are paid wages between assignments, and the payment of the minimum wage between assignments for the periods exceeding five working days.

2012 - Continuation of the attempting to liberalise the labour law

The Government of the Republic of Lithuania this year continued to declare their intention to liberalize labour relations, to provide more economic freedom for business. But the forthcoming Parliament elections stopped this process. Therefore, during this year, some amendments of the Labour code were adopted, but they hardly could be called as liberalisation of labour relations. Moreover maybe in opposite they: (i) introduced a new type of parental leave - *adoption leave* – foster mother or father after adoption is granted 3 months leave with the social benefit of 70 per cent her/his wage; (ii) *reform of the pre-trial stage of investigation individual labour disputes*. The 10 territorial Labour Dispute Commissions are going be established under the territorial State Labour inspectorate offices. These commissions will be composed of three members: chairman – labour inspector, representatives of trade unions and employers' organizations.

II. Modernisation of the Lithuanian Labour law

In 2013, the Government of the Republic of Lithuania initiated the project "The creation of the legal and administrative model of labour relations and the state social insurance". It started to be implemented by scholars and researchers of Vilnius University, Mykolas Romeris University and the Lithuanian Social Research Centre in 2014. One of the main objects of this project is to prepare a qualitatively new and modern legal act to regulate labour relations in Lithuania. Firstly, in order to change and clarify the recent model of labour relations, it is important to take care of the technical side: eliminate inconsistencies, gaps, undesirable practices (case law), simplify regulation and reduce bureaucracy costs. In addition, the process includes the economic challenges of the Lithuanian labour relations: fight against the shadow economy and national competitiveness enhancement. Talking about trends and changes in the content of Labour Law regulation, it has to be noted, that the main goal is to set forth the principles of *flexicurity* in labour relations. It includes the following: more flexible regulation of working and rest time; various forms of employment and contracts of employment; mobility of the workplace; modification and termination of employment contracts, etc. Finally, these aforementioned elements of flexibilisation cannot be implemented without the role of social partners; therefore, the purpose of the new legal act is to strengthen the industrial relations system and to provide more possibilities for employees and employers to agree on their rights and responsibilities in collective agreements.

The main novelties in Lithuanian Labour code draft

1. Individual labour relations

A novelty of the Labour Code is the concept of the average number of the employees of the employer and the concept of the average number of the employees in the working place. The application of these concepts is linked to a different level of obligations for the employer.
For example, **employers with the average number of employees (more than 50)**, have the obligation to publish on a website the information concerning applied administrative penalties in effect and penalties imposed for the infringement of laws at least once a year. This information should include the laws regulating employment relationships; anonymised employee data except data of employees occupying managerial positions; data on the average wage according to job positions and sex; implementation of equal opportunity policies and measures; employees' personal data retention policies and measures. Such employers have an obligation to invest more in training and there is an obligation to have a system of remuneration for work.
The employers employing less than ten employees may be exempted from the application of certain provisions of the Labour Code. For example, they are not obliged to provide information about the state of employment relationships, therefore, they may double the trial period, halve the period of notice and disregard the rules on priority rights when dismissing an employee. Furthermore, to make their own annual leave schedule in accordance with the requirements of the Code, sometimes they make an agreement with an employee for a 30 per cent lower per diem rate and disregard the rules on the pay for educational leave.
The employers employing less than five employees on average have the right not to grant the employee annual leave when employment relationship has lasted less than one year. Instead, the employee must be paid a compensation for unused annual leave and such employers are entitled not to apply the rules on making the annual leave schedule when granting paid leave, to request the court not to reinstate the employee in his or her previous position in case of unlawful dismissal and to award compensation instead.
The principle of respect to the employee’s family commitments (work-life balance) takes a new meaning in the legal norms that oblige the employer to take measures to help the employee fulfil his or her family commitments. However, there is exception for the cases when it is impossible due to specific features of the work function or the employer’s activities or due to excessive expenses on the employer’s part. The employer must consider and give a reasonable response to the requests of the employees. Employee’s actions at work must be considered in order to fully and effectively implement the principle of work-life balance.
Greater attention is paid to the improvement of employee’s qualifications, professionalism and the ability to adjust to the changing business, professional or working conditions. To this aim, Labour Code sets forth that in cases and in the order established by law or the agreements between the parties, the employer must provide conditions for employee’s training, in-service training, and the improvement of professional skills.
Besides the already well-known types of employment contracts (indefinite-term, fixed-term and temporary employment contract), the Labour Code establishes a whole set of new types of employment contracts - work training contract, apprenticeship contract, contract for unforeseen volume of work (“min 8 hours”), portfolio work contract, job-sharing contract, and employee-sharing contract.
Legislation governing the termination of an employment contract has certain innovations as far as it concerns grounds for expiry of the employment contract, protection of individual groups of employees, formalization of the dismissal procedure and severance payments of the employees.
To classify the grounds of dismissal from work according to the will and fault of the parties, it should be mentioned an employment contract might be terminated by agreement between the parties or on the initiative of one of the parties. The employee’s possibility to terminate an employment contract is differentiated according to the grounds on which the termination is based. The grounds that are considered important shall be only idle time without any fault on the part of an employee or non-payment of full work pay for over two successive months. In these cases, an employee shall be paid severance pay in the amount of two week’s wage.

Termination of employment contract on the initiative of the employer is divided into two groups: based on the grounds not related to the fault on the part of an employee and for reasons related to the fault on the part of an employee.
An employer shall have the right to terminate an employment contract of indefinite duration or a fixed-term contract for the following reasons: (i) work activities performed by the employee become superfluous due to changes in work organization or other reasons related to the employer's activities; (ii) an employer is not satisfied with the results of work of the employee; (iii) an employee refuses to work under the changed essential or additional contractually agreed conditions of an employment contract or to change the type of working time regime or the location of employment; (iv) an employee does not agree with the continuity of employment relationships in case of transfer of business or a part thereof.

2. Collective labour relations
The Labour Code emphasises that all activities of employees' representatives shall be organised and exercised by their mutual co-operation so that general interests and rights of employees shall be protected as efficiently as possible. Employees' representatives (works councils and employees' trustees) shall not exercise such functions of employee representation, which shall be considered as exclusive trade unions' rights.

The new Labour Code lays down the guarantees of all employees' representatives unanimously and systematically, excluding: (i) guarantees of the independence of employees' representatives; (ii) guarantees of the activities of employees' representatives; (iii) guarantees and protection against discrimination of the representatives implementing the representation of employees.

Labour Code draft suggested to establish compulsory works councils in an employer's enterprise, establishment or organisation where the average number of employees is 50 or more. Also, there is the possibility to create a works council where the average number of employees is more than 20 but less than 50 and where a works council election is initiated by employees or by the trade union operating on the employer's level. The number of members of a works council depends on the average number of employer's employees and it varies from 3 to 11 members. Where the average number of employer's employees is less than 20, an employees' trustee shall be elected in a secret ballot at a staff meeting for a term of three years. The provisions, which regulate the activities of works councils, shall be applied to the employees' trustee *mutatis mutandis*.

Collective bargaining is integrated with the regulation of collective agreements. The detailed order of collective bargaining is stipulated as follow: the presentation of the initiative party of collective bargaining, the submission of demands, the delegation of representatives in a collective bargaining group, the opening of collective bargaining, context of the agreement of a collective bargaining group under the course of collective bargaining. Furthermore, there is the regulation concerning the rights and duties of the parties of collective bargaining, which includes the right to receive information, the right to invite experts as well as the duty to protect confidential information.
The Project regulates not only the peculiarities of collective bargaining in civil service but also in the public sector. It sets forth the Government or its authorised institution after receiving the proposal to begin collective bargaining on a sectorial or inter sectorial level must invite the employers' organisations of the respective sector of economic activity operating in private sector. These organisations may participate together in collective bargaining. In order to achieve wage bargaining as the main object of collective bargaining in the public sector, it is suggested that the bargaining should be finished no later than the Ministry of Finance starts to prepare the project of the State budget as well as the project of financial indicators of municipal budgets. Furthermore, the parties of the prepared and agreed project of a sectorial collective agreement shall receive the conclusion on it

from the Ministry of Finance. The maximum term of a collective agreement in the public sector is three years.
The Project specifies that parties of a collective labour dispute over interests may take following collective actions: representatives of employees may declare a strike and employers (employers' organisations) may organise a lockout. Representatives of employees may organise the strike in these cases: when the dispute commission states that the dispute was not resolved or the employer (employers' organisation) does not delegate his members to the dispute commission; when the mediator states that the dispute was not resolved or was partially unresolved; when the employer (employers' organisation) do not execute the arbitration's decision.

The Project stipulates the possibility to declare the lockout, which is currently not regulated. The employer (employers' organisation) may declare the lockout: when the employees' representatives do not execute the labour arbitration's decision; or when the representatives of employees declare the strike and declaration has been postponed or suspended. It should be noted, that for the first time in Lithuania the defensive employers' lockout is established – such a right is granted according to the provisions of the European Social Charter (amended).

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