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TOPIC 1
TRADE LIBERALIZATION & LABOUR LAW

REPORT OF THE
CROATIAN SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW

I. IDEOLOGICAL DEBATES AND THE LABOUR LAW

1. Does it exist in your country a debate on the reformulation of the labour law in the light of:

   (a) The globalization process; - **Yes it does**.
   (b) Technological change; -**Yes it does.**
   (c) Changes in the organization of work? –**Yes it does.**

2. If your answer to (1) is affirmative, could you give details on the range of this debate and the interlocutors that take part thereon (for example, if it is of an academic type or if it involves also the government, the social actors, the legislature, the financial operators, others)?

   It involves the social actors (government, trade unions and employers association). In this sense there were amendments to the Labour Act in the years 2001 and 2003.

3. Is this debate at the origin of proposals of legislative reforms, or of recent reforms as regards the labour law? If it is, could you give details of these reforms, for example, those relating to:

   (a) The contract of employment;
   (b) Termination of employment (see also question 5, below);
   (c) Collective bargaining;
   (d) Wage-fixing methods;
   (e) Duration of work and organization of the working time;

(f) Modification of the terms and conditions of work and employment;
(g) Labour mobility;
(h) Other topics?

Although the Amendments to the Labour Act in the years 2001 and 2003 were intended to increase the international competitiveness and to attract foreign investments, the trade unions were not ready to accept decrease of workers' rights.

This especially refers to the amendments in 2001. Namely, during the parliamentary pre-election period trade unions supported the new government. Therefore, due to the aforementioned promises given to the trade unions, most of the 2001 amendments contributed to the growth of labour rights (e.g. duration of working time was decreased from 42 hours per week to 40 hours per week; workers' representatives on the supervisory board; more detailed protection of workers' rights in the case of transfer of undertakings; in the case of employer's failure to pay the salary, which at that time was not so uncommon due to post-war and transition economic situation, payroll account was given a status of enforceable document; moreover, failure to pay salary was introduces as a legitimate ground for strike). Nevertheless, amendments in 2001 enacted some provisions in favour of employers (e.g. changes in definition of "small employer" from 5 to 10 employed workers as to facilitate the procedure of regular notice; reduction of notice period in the case of regular notice due to the worker's misconduct).

Pursuant to the recommendations and conditions set out by the World Bank, the amendments in 2003 were oriented to the flexibility and liberalisation of Croatian labour market, and hence were more favourable for employers (e.g. changes in definition of "small employer" from 10 to 20 employed workers; reduction of notice periods to halve; reduction of severance pay: 1/3 of gross salary pro year of employment instead of ½ of net salary pro year of employment; regulated possibility of performance of work at a separate workplace such as worker's home or other premises other than the workplace of the employer; introduction of temporary employment agencies). Although the main intention of 2003 amendments to the Labourt Act was flexibility of labour relation, nevertheless trade unions were given the right to collect a "bargaining fee" (non-union workers' obligation to pay a fee, throughout the period of validity of the collective agreement, for the benefits negotiated by the collective agreement). It is important to mention that in the year 2005 Croatian Constitutional Court repealed those provisions concerning "bargaining fee" as unconstitutional. Further on, other novelties in 2003 amendments to the Labour Act were motivated by the process of harmonisation of Croatian labour law with the relevant *acquis communautaire* especially in the following areas: employment discrimination, sexual harassment and burden of proof, more precise definition of equal pay for equal work or work of equal value, fixed-term work, stimulation of fathers to use parental leave by its prolongation).

4. Did this debate have a bearing on:

(a) Court decisions;

As it is well known, Croatia is not a common law country, but belongs to a civil law system. Therefore, the Courts are obliged to apply legislative acts. So the debates have a bearing on the possible act amendments, and not on court decisions.

However, it important to point out that until 1995 employment relationship was regulated by the legislation dating from the period of socialism. Such legislation was more oriented to the protection of workers' rights. After the enactment of the Croatian Labour Act in 1995, which contained provisions balancing interest of both parties to the employment relationship, courts continued interpreting norms *in favorem laboratoris.* The amendments to the Labour Act in 2001 and 2003, as well as frequent debates on trade liberalization contributed to the more relaxed approach of the courts in the sense that the principle *in favorem laboratoris* is not any more the basic principle for the norm interpretation. Namely, the courts accept the idea that the employment relationship is of contractual nature, so that the balance of interest of both parties is of great importance. Hence, the courts recently started taking more into account what consequences their judgment will have for the employer.

(b) Collective bargaining processes and issues?

Regarding debate on collective bargaining, it should be mentioned that the minimum of workers' rights is prescribed by the law, and the subject of collective agreements is the enlargement of such rights. The collective agreements in Croatia usually have the same level of protection of workers' rights as it is prescribe by the law at the time of the collective agreement conclusion. Therefore, decrease of rights in the Croatian Labour Act has no practical bearing on those workers to which such collective agreements apply.

II.- BUSINESS LAW AND LABOUR LAW

5. Have it been any modifications in the labour legislation (or the collective agreements) in connection with business law, for example with regard to the following issues:

(a) The legal position of employees in the event of the transfer of an undertaking or parts thereof;

Yes, the 2001 amendments to the Labour Act regulated in a more detailed way the protection of workers' rights in the case of transfer of undertakings. However, the intention of those modifications was the better protection of worker's rights. Currently the relevant provisions of Labour Act read as follows:

Transfer of contracts to a new employer
Article 129 (136)

(1) If, as a result of a status change or legal transaction, the whole company or part of the company (plant), is transferred to a new employer, all labour contracts of workers working in the company or part of the company which was subject to transfer are also transferred to the new employer.
(2) The worker whose labour contract has been transferred as provided in paragraph 1 of this Article retains the rights he or she acquired until the transfer date in relation to the dismissal, notice periods, severance pay and other issues related to employment.
(3) The employer to whom labour contracts are transferred as provided in paragraph 1 of this Article assumes, as of the transfer date, all the rights and obligations from the labour contract that has been transferred, in unaltered form and scope.

(4) The employer who transfers the company or part of the company to a new employer shall inform the new employer, fully and accurately, about the rights of the workers whose labour contracts are being transferred.
(5) The employer shall inform the worker whose contract is being transferred about the transfer of his or her labour contract to the new employer. This information is to be given in writing.
(6) The labour contracts referred to in paragraph 1 of this Article are transferred to the new employer as of the date when the transfer of the company or part of the company took legal effect.
(7) If transfer of the company or part of the company is made in the bankruptcy proceedings or rehabilitation proceedings, the rights that are being transferred to the new employer may be reduced in accord with the collective agreement that has been concluded or agreement between the works council and the employer.
(8) If a work council was established in the company or part of the company which is subject to transfer, the works council continues its work, but for no longer than one year.
(9) If an agreement has been concluded between the works council and the employer in the company or part of the company which is subject to transfer, its application continues until the conclusion of a new agreement, but for no longer than one year.
(10) If the company or part of the company is transferred to a new employer only for a limited period, the employer who is transferring the company or part of the company is, together with the new employer, jointly liable for the obligations towards the workers that arose after the date of transfer of the company or part of the company, up to the value of the assets transferred to the new employer for a limited period.
(11) The provisions of paragraphs 1 to 10 of this Article apply, as appropriate, also to institutions and other legal persons.
(12) The person who, by transferring the company or part of the company or in another way, fraudulently avoids fulfilling his or her obligations towards the worker, shall be ordered by the court having jurisdiction to fulfil his or her obligations, even if the labour contract was not concluded with this person.

Influence of change of employer on the application of a collective agreement
Article 197 (207)

In the cases referred to in Article 136 of this Act, the workers shall continue to be subject to the collective agreement which applied to them at the time of the change, until the conclusion of a new collective agreement, but for no longer than one year.

(b) The inventions of employees;

There were no changes in this area.

(c) Workers' rights in the event of the insolvency of the employer;

Pursuant to the Insolvency Act the employer's insolvency is the legitimate ground for notice.

In the year 2003 the Parliament enacted the Act Securing Worker's Claims in the Event of Employer's Insolvency. This Act regulates the type and scope of workers' rights in the event of the employer's insolvency, the tasks performed by the Development and Employment Fund as a guarantee fund for the payment of workers' claims, the conditions under which these rights shall be realised and the means for securing funds necessary for the realisation of these rights. The relevant provisions on worker's rights read as follows:

Article 3

(1) Within 30 days from the pending decision referred to in Article 12 of this Act, the Fund shall be obligated to pay to the worker:
1. unpaid salaries for the three months immediately preceding the termination of employment or the declaration of bankruptcy,
2. unpaid sickness benefits the employer was obligated to pay under health insurance regulations from his or her own funds three months immediately preceding the termination of employment or the declaration of bankruptcy,
3. salary compensation for the unused annual leave to which the worker was entitled in the calendar year in which his or her employment was terminated, or in which the bankruptcy was declared,
4. severance pay under conditions prescribed by the law,
5. compensation for damages for an injury at work or occupational disease, awarded by a final decision.

(2) The Fund shall guarantee the payments referred to in paragraph 1 of this Article in the amount:
1. of the minimum salary in the Republic of Croatia, for each month the worker did not receive his or her salary or salary compensation from items 1 and 2 above,
2. not exceeding one half of the minimum salary in the Republic of Croatia in case referred to in item 3 above,
3. of one half of the severance pay referred to in item 4 above, as prescribed by the law,
4. not exceeding one third of the amount of damages awarded by a final decision referred to in item 5 above.

Article 4

When paying salaries and salary compensations, the Fund shall also be obligated to calculate and pay compulsory insurance contributions.

(d) Collective redundancy procedures;

The employer's obligations in the case of collective redundancies were redefined by the 2003 amendments to the Labour Act and harmonized with Directive 98/59/EC. The sole criteria for the making of redundancy social security plan was introduced so that the the employer who, due to economic, technological or organisational reasons, intends to dismiss at least 20 labour contracts in the period of 90 days, must prepare such a plan in cooperation with the works council and competent employment service.

(e) Freedom of establishment of the workers after the end of their contract of employment (non-competition clauses);

There were no changes in this area.

III.- INTERNATIONAL TRADE AND LABOUR LAW

6. Is your country a party to an economic integration agreement? If it is, please indicate which.

Republic of Croatia is party to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part (hereinafter the SAA).

7. If your answer to (6) is affirmative:

(a) Please indicate if the legal system set up by the agreement adresses labour issues. If so, please provide a brief description thereabout.

The issue of labour mobility is in a restrictive way regulated in the SAA. Relevant are provisions on free movement of workers (Arts. 45 – 47 of the SAA), but one should also take into account the provisions on establishment, which are relevant for the employment of key personal of subsidiaries and branches (Art. 54 of the SAA). Derogation from rules is possible on the grounds of public policy, public security or public health (Arts. 62 – 63 of the SAA). It is important to note that SAA does not ensure any milder or easier entrance to the labour market. For the matter of the right of residence and work-permits relevant are national measures of the Member States and Croatia respectively. The only privileges that SAA offers is the fact that legally employed migrant workers should not be discriminated (as regards working conditions, remuneration or dismissal, compared to own nationals) and that their legally resident family members (spouse and children) should have access to the concerned labour market during the whole period of worker's authorised stay of employment (this accessory family members' right does not concern seasonal workers and workers coming under bilateral agreements, unless otherwise provided by such agreements). SAA also imposes the obligation of adoption of rules for co-ordination of social security systems for workers and their family members (Art. 47 of the SAA).

As regards the process of legal approximation of Croatian labour law legislation to that of the EC, relevant is general provision of Art 69 of the SAA, which provides that "Croatia shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*". Furthermore, Art. 91 of the SAA provides for social co-operation, especially in the following areas: employment, adjustment of the Croatian legislation concerning working conditions and equal opportunities for women and men, and improvement of the level of protection of the health and safety of workers.

(b) Do the agreement's rules on labour issues have supranational legal effects? If they do, how are they applied? Can one draw an assessment from their implementation?

We are of the opinion that only the provisions on labour mobility that are precise (such as non-discrimination rules for migrant workers and provisions related to the labour market access of the legally resident family members) could be directly applicable in Croatia and *vice versa* and that foreign workers could rely on them before national courts and before relevant administrative bodies (e.g. Ministry of internal affaires for issuing of work permits).

Other relevant provisions of the SAA that provide for legal harmonization have only obligatory effect on the Croatian state. However, failure to harmonize could produce particularly harmful political effects in relation to the process of Croatian accession to the EU.

(c) If the agreement's rules on labour issues do not have supranational effects, please give details on their implementation machinery if such a machinery exists.

See *supra* answer to the previous question.

In addition, Art. 46. and 47. of the SAA provide for the adoption of implementing rules within the Stabilisation and Association Council (hereinafter as SAA Council). Those decisions are according to the Art. 112 of the SAA binding on the Parties.

Pursuant to the Art. 110 to 113 of the SAA the SAA Council supervises the application and implementation of this Agreement. It meets at an appropriate level at regular intervals and when circumstances require. It examines any major issues arising within the framework of the SAA and any other bilateral or international issues of mutual interest. Further on, each Party may refer to the SAA Council any dispute relating to the application or interpretation of the SAA, in which case the SAA Council has the power to settle the dispute by means of a binding decision.

8. In developing a social dimension to trade agreements in which your country participates, was civil society (trade unions, NGOs) consulted during the stage of formulating national policy? If so, what form did the consultation take? Is there a permanent consultative role for civil society organizations in the agreement, and if so, how is the role defined and what has been the experience?

During the process of negotiating the SAA the Economic and Social Council was consulted. It is important to note that the activities of the Economic and Social Council are based on the concept of tripartite cooperation among the Government of the Republic of Croatia, trade unions and employers' associations, aimed at solving economic and social issues and problems. The purpose of Economic and Social Council is protection and promotion of economic and social rights and interests of both the workers and the employers, in pursuance of coordinated economic, social and development policies, fostering the conclusion and application of collective agreements and harmonising these agreements with the measures of economic, social and development policies.

No, SAA does not provide for any permanent consultative role for civil society organizations.

9. Were there efforts in your country in order to bring the national labour law closer to that of its principal trade partners? If so, what methodology has been followed for the law to be harmonized?

Croatian Labour Act has been strongly influenced by continental labour law systems (Germany, Austria, France), especially by the German one. Apart from that, Croatia on a voluntary basis, before having any obligations under the SAA agreement, started harmonizing its labour law with *acquis communautaire*. All this was motivated, among other, by the idea of attracting foreign capital and investments.

10. Does your country's law on international trade include provisions which condition the granting of commercial advantages to third states to the respect by the latter of certain basic rights of the workers? If it does, how are these provisions applied? Has your country already applied commercial sanctions pursuant to these provisions?

No, it does not.

11. Is your country's labour law affected or is likely to be affected by provisions on the international trade of other countries with which it maintains important trade relations (for example, if your country's trade partner conditions the granting of trade advantages to third states to the respect by the latter of the internationally recognized workers' rights)?

No, it does not.

12. If your answer to (11) is affirmative, could you indicate if your country has ever been compelled to revise its law or industrial relations practices so as to avoid losing trade advantages granted by other countries.

IV.- *SOFT LAW* AND THE EMERGENCE OF NEW ACTORS

13. If your country is the seat of multinational enterprises (MNEs):

(a) Have MNEs operating from your country adopted codes of practices relating to workers' rights, which the MNEs subcontractors/providers must abide by? If they have:

i. Please provide information on the contents of these codes and their implementation machinery.
ii. Please indicate if it has happened that subcontractors/providers not abiding by a code have been excluded as suppliers from a MNE or have been summoned to respect the code.
iii. Can one draw an assessment on the implementation of these codes?

There are only a very few companies (e.g. in the pharmaceutical sector, electro industrial sector and food industry) that have subsidiaries and branches in some well developed countries of the world. According to our knowledge, they have not adopted codes of practices relating to workers' rights which are binding for their subcontractors/providers.

Nevertheless, we are pointing out that in May 2005 Croatian Chamber of Commerce adopted Codex on Business Ethics. This Codex was accepted by 128 companies registered in the Republic of Croatia, and the rules therein are applicable only on performance of business operations in Croatia. Regarding labour law issues, the Codex on Business Ethics forbids discrimination and sexual harassment, promotes the principle of health and safety at work, provides for appropriate salary and promotes alternative dispute resolution. Those rights represent no novelties compared to rights guaranteed by Croatian Labour Act, since the Labour Act itself provides high level protection of worker's rights.

(b) Have MNEs operating from your country signed a world agreement with a trade-union interlocutor, aiming at the respect of the workers' rights? If they have:

i. Please give information on the contents of these agreements and their implementation machinery.
ii. Please indicate if it has happened that subcontractors who have been held in breach of the agreement have been excluded as suppliers from a MNE or have been summoned to respect the agreement.
iii. Can one draw an assessment on the implementation of these agreements?

No, they have not.

(c) Have MNEs operating from your country adhered to a *social accountability* standard worked out by a NGO? If they have, please give information on these standards and the way in which their application is monitored.

Sine MNEs pay attention on their image in the general public, one can notice that some MNE declaratively accept some standards proclaimed by the NGOs.

It is worth to mention that some NGOs contributed to the change of social climate and thus to the enactment of specific rights (e.g. ban of discrimination on the ground of sexual orientation in the Labour Act).

14. If in your country operate subcontractors of MNEs or other export-oriented enterprises:

i. Were some of these companies obliged or encouraged to adhere to a code of conduct? If so, please indicate the type of code to which they have adhered.

According to our knowledge there is a Croatian company in a pharmaceutical sector that adhered to an internal Code of Conduct of a foreign pharmaceutical MNE aimed at their subcontractors.

ii. Did some of these companies adhere voluntarily to a social accountability standard?

No, they did not.

iii. Are there people certified by NGOs so as they can monitor the respect of a social accountability standard? If they are, are audits frequent? How are they carried out?

No, there are not.

15. Is there any evidence in your country that the existence and application of one or more of the following public "soft law" instruments has had any effect on labor law or collective bargaining:

(a) The OECD Guidelines for Multinational Enterprises
(b) The ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy;
(c) The ILO Declaration on Fundamental Principles and Rights at Work;
(d) The United Nations' Global Compact

All the principles set out in the above mentioned "soft law" instruments are enacted in Croatian Labour Act for all the employment relationships in the Republic of Croatia.

See also *supra*, answer to question no. 13.