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TOPIC 2

LABOUR LAW (IN ITS INDIVIDUAL AND COLLECTIVE ASPECTS) AND PRODUCTIVE DECENTRALIZATION

CZECH REPUBLIC

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1. General

In our country the trend toward increased productive decentralisation is still low and it is very difficult to present some generalisation. There are various forms of productive decentralisation, but all companies are the independent legal bodies (legal entity or physical entity). According to the progressive development of the productive decentralisation it is difficult to appraise its influence on the individual and collective labour relations.

2. Groups of companies and unity of enterprise

The legal regulation is unified; labour relations are regulated by Labour Code (Act No. 65/1965) relating to all enterprises. The partial regulation can be realised by the collective agreement – inside the individual employer. If the principal company and its contracting affiliates, subsidiary companies or partners are the independent (separate) legal or physical entities, every entity can bargain an enterprise collective agreement separately. One collective agreement can regulate their labour relations if they all would be members of the organisation of the employers (the employers' trade union) and bargain a collective agreement of the higher level.

The social legislation is also unified and cannot be regulated differently in the enterprise.

3. Transfer of undertaking and other modifications in the legal situation of an undertaking or parts thereof

- a) Transfer of the undertaking or its part is regulated by the Commercial Code as the institutes “liquidation of a company, sale of the undertaking or sale of the part of the undertaking” The transfer of tasks or activities of the employer is defined by the Labour Code: “For these purposes ‘the employer’s tasks and activities’ shall in particular mean tasks relating to output or services and similar activities which are performed by a legal entity or an individual in his/her own name and at his/her own liability in facilities or premises determined for their performance in accordance with other statutory provisions.” This regulation is also applicable to the externalisation (subcontracting, outsourcing) of certain operations of an undertaking because the transfer of the proprietary rights is not necessary precondition for the transfer of the undertaking, its part, the transfer of the activities or their part. The condition for the transfer is that the transferee is capable to continue as an employer in fulfilling of the tasks or activities of the transferor (the former employer).
- b) The protection of the employees’ rights is secured by the institute of the transition of the rights and duties from the labour relations. The transferee enters into all rights and duties of the transferor and this legal consequence of the transfer cannot be eliminated by the contract.
- c) Yes. Labour Code prescribes that the employees’ representatives (trade unions or the employees’ council) have the right to information and consultation. This right is given to the employees’ representatives in the transferor and also in the transferee employer. Information and consultation are related to this questions:
 - proposed date of the transfer,
 - legal, economic and social consequences of the transfer,
 - prepared measures in relation to the employee.
 If there are no employees’ representatives the right to information and consultation is given directly to the individual employee. The transferor and the transferee have the obligation to inform all employees and consult all questions with them. This regulation is also related to outsourcing of certain operations.
- d) This question is solved by the commercial law and depends on the type of contract which is the ground framework to the transfer of the undertaking, part of the undertaking or the transfer of activities, part of activities.
- e) As we sad in item b) the transferee enters into all the rights and duties of the transferor as a result of the transfer of the undertaking and becomes the new employer. This legal consequence cannot be eliminated by the contract.

4. The legal situation of the employees of contractors and other affiliated enterprises vis a vis the principal/parent enterprise

- a) The liability of the principal/parent enterprise for the obligations of its contractors or other affiliated companies towards the employees of the latter cannot arise if the latter are the independent entities (physical or legal entity).
- b) Such obligation is not prescribed.
- c) Such judicial decisions do not exist.

5. Lease of workers and other forms of supply of workers

- a) Not.
- b) Lease of workers through the temporary work agencies (TWA) is regulated by Labour Code and by the Act No. 435/2004, about the employment.
 - I. The law doesn’t regulate the cases in which leasing temporary workers is permitted;
 - II. The law doesn’t regulate industries or activities for which the supply of temporary workers is forbidden.

III. TWA must have a licence for an arrangement of the employment through the leasing of temporary workers. This licence is given by the Labour Bureau. Conditions for the licence given to the physical entity are:

- age 23 years,
- capacity to enter into legal acts,
- impeccability (the person was not lawfully convicted for the premeditated criminal act or for the crime against the property),
- professional qualification (graduate and 2 years of practice in the field of the arrangement of the employment or in the branch for which the licence has to be permitted; secondary school-leaver and 5 years of the same practice)

Conditions for the licence given to the legal entity: The responsible managing agent of the legal entity must fulfil the conditions prescribed for the physical entity.

IV. The leasing of temporary workers is based on 2 contracts:

- the contract between TWA and the user enterprise (commercial contract with some special regulation by Labour Code),
- contract between TWA and a temporary worker (contract of employment, contract of labour activity).

V. Yes. The supply of temporary worker cannot continue longer than 12 calendar months. The limitation is only relative because it is not effective in the cases when the temporary worker asks for longer supply himself/herself ; when the temporary worker substitutes the employee with maternity or parent leave.

VI. There are no other restrictions.

VII. Wages and other conditions of the employment of the temporary worker shall not be worse than wage and other conditions of the employment of the comparable worker of the user enterprise. Wage and the other conditions of the employment of the comparable worker must be contracted in the contract between the TWA and the user enterprise.

VIII. During the temporary worker's supply the user enterprise can only appoint labour tasks to the temporary worker, organise, operate and control his/her work, ensure the working conditions and the safety and protection of the health. The user enterprise is not liable for the obligation of TWA.

IX. There is no special regulation. The trade union in TWA doesn't usually exist – TWA has existed for very short time. The temporary worker usually is not a member of the trade union in the user enterprise.

X. Sanctions for the illegal use of temporary workers are regulated by the Act No. 435/2004. The physical or legal entity commit an administrative offence if they arrange the employment without the licence or break the law during the arrangement of the employment in other way. The Labour Bureau can impose a financial penalty till 2.000.000,- Crone (cca € 68.000,-)

c) Such judicial decisions do not exist. The labour relation arises only between the TWA and the temporary worker.

6. Franchising

a) There is no special regulation of the franchising but it exists in the practice and originates from so called "contractus innominatus" which defines rules for the provision of franchising.

b) The franchisor and the franchisee are the independent entity (a legal entity or a physical entity). Such judicial decisions do not exist.

c) The franchisee is the independent entity and can be an employer. The employees are in the labour relation to the franchisee not to the franchisor. The franchisor can influence the

labour relations in the franchisee's enterprise only in so way that there are contracted the conditions in the franchising contract and this conditions define boundaries to labour relations.

7. Collective action and collective bargaining in a context of productive decentralisation

- a) Trade unions exist independently on the productive decentralisation. The basic organisation of trade union is usually established in the enterprise (legal or physical entity); there can be also more basic organisations of trade union in the enterprise. The basic organisations existing in the similar branch of production or activities can create the branch trade union. This structure doesn't depend on the group of companies.
- b) Not.
- c) Not.
- d) The collective bargaining can be conducted on the level of the enterprise (an enterprise collective agreement) or on the level of the trade union of the employers and the branch trade union (collective agreement of the higher level).