FOUR YEAR OF THE LITHUANIAN LABOUR REFORMS

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Introductional remarks

Speaking about the Lithuanian Labour Law, its creation, changes and reforming processes, usually there are same periods mentioned:
1) 1990–1993 year – after the Independence during the short time the main and basic labour law acts were enacted. To speaking about historical heritage – the Lithuanian Labour Law always was codified, i.e. (*that is*) the only and main legal act was the Soviet Labour Code. So, after receiving independence the part of lawyers and social partners spoke and agitated for new codified law. The social and economic changes didn‘t make enough time for such grand work. Why was decided to create and adopt as soon as possible different single legal acts (as usually – laws) regulated separate labour relations questions, fields. During one year the main laws were adopted: Law on Employment Contract, Law on Holiday, Law on Collective Agreements, Law on Collective Labour Disputes, Law on Wage and etc. However after some years was noticed that such system of the regulation labour relations has internal disagreements, there were a lot mistakes of law-making procedure. But the main reason to come back to idea of new labour Code of course was the European integration process and necessity to transpose the EU directives.

2) 1994–2003 year – this was rather long period when the new (nowadays) Labour Code was created and adopted. The conception of the new Labour Code was enacted in 1994by the Government. The Labour Code was adopted in 2002 and came into force from 2003. Such long period was caused by search compromise between social partners and the idea of authors of this law draft. Lawmakers wanted to transpose Lithuanian labour law from formal high centralised regulation to social dialogue. The main idea of conception was to establish possibilities for labour relations parties to regulate their labour conditions by the collective agreements. For Lithuanian social partners is was new and their looked at it with

kind of no-confidence. It must be mentioned that during debates in Parliament there was decided not to go so far away and to choose the middle version. In such period the level of social dialogue in Lithuania was very low – about 4-5 per cent all employees were the members of trade unions. Why our Parliament members decided better to have "strong" law with maximum legal regulation, then to go on risk and in case of absence collective bargaining to leave employees without relevant legal and social guarantees. Why in the new Labour Code only 20 per cent of all provisions delegates to collective agreements. However the Labour Code was met as very modern. But on the other hand it must be mentioned that during the adoption this Code the level political parties were in power. Why the Code was very high social levelled. Such situation wasn't common with employers interest but the excellent economic situation, European integration and its caused migration of working power and lack of workers didn't let to speak about it loudly. One more very specific and serious reason for silence was political and legal decision of decision maker don't allow multiplex changes of this Code. The principal idea was to go on changes not often but strategically. There to much more serious and constructive changes were made in – 2005 and 2008. These amendments, which had been drafted by the working groups of competent experts, address the issues of improvement of the labour code from the inside, such as inconsistencies of the legislator, the legal vacuum revealed by case law. Therefore, the labour code actually both preserved the original structure and reflected the– the balance of interests of social groups. It caused that regulation of labour relations remained the same as it was in 2002, and in fact much earlier – strict and inflexible.

Lithuanian labour reforms in times of economic crisis

The coalition of the right and centre coming 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 a 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 as the main instruments to improve the situation the general tightening of spending (reduction of the social standard) and creation of an economic environment favourable for employers. Therefore, the Programme of the Government of the Republic of Lithuania set the goal of taking urgent action liberalising labour relations. Under the Programme, the Government assumed the commitment to observe the principles of the *flexicurity* on the example of Denmark 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 the public finances of the state, the Government soon initiated adoption of a package of ambitious viewed amendments to laws 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 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, then had a 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 in respect of liberal provisions was softened to the same extent as the willingness of political parties in power not to become involved in conflicts with social partners increased. Consequently, two laws amending the Labour Code were adopted over the period of 4 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 main periods of attempts to liberalize labour relations:

1) ***2009 - modest initial attempts to liberalise labour relations***:

This amendment was intended as a provisional measure, because it was in force only until 1 January 2011, i.e., for 1.5 years. Such an unusual tactic reflects an attempt by initiators of the draft to please everybody. On the one hand, the new legal norms pursue the aim of ameliorating the situation of employers under the conditions of the economic crisis; on the other hand, employees are told that these are merely temporary norms which will remain in force until the 'end of the crisis'. Therefore, at this stage the Government aims at maintaining social stability with the help of the method of provisional anti-crisis measures, rather than reform of labour law or major changes to labour law.

A point of departure for the proposals over regulation of labour relations offered by the Government was both the rankings of the country's economic competitiveness (e.g., *doing business*) and the criticism of inflexible regulation of labour relations imposing limitations on businesses repeated by Lithuanian employers.

Specific proposals of the Government concerning amendments to the Labour Code aimed to achieve the following goals:

a) *reduce for employers the costs of employees' dismissal*. It is not stability of labour relations, or support measures for preservation of workplaces, but facilitation of termination of such contracts that the Government viewed as likely to promote adaptation of the labour market. Lithuania's labour law traditionally stipulates a sufficiently broad protection of employees in the event of termination

of employment contracts on economic grounds. Lacking willpower or political consensus on the issue of liberalisation of termination of employment contracts in individual labour relations, the Government offered to achieve this objective with the help of collective agreements. It was proposed to permit reduction of employee guarantees, but only if this is provided for by a collective agreement. Thus, the collective agreement would be granted the power of regulating the terms of dismissal *in peius*, that is, reducing a strict imperative statutory regulation to the detriment of employees. This proposal was not a particularly drastic one, because it indirectly encouraged collective bargaining. Therefore, for trade unions it ought to have been even acceptable, but it was received with resistance and in the end it was implemented only partially – a collective agreement allows for reduction by half only as regards the time limit of notification of dismissal, but not the amount of the severance pay;

b) *to permit conclusion of fixed-term employment contracts with permanent workers*. Liberalisation of conclusion of fixed-term employment contracts is often referred to as an incentive of creation of jobs. It should be noted that Article 109 of the Labour Code strictly regulated this issue by prohibiting conclusion of fixed-term employment contracts with permanent workers at the request of the parties to the contracts. The only exceptions were non-permanent work and special provisions in laws as well as – the element of flexibility – in collective agreements. The Parliament viewed the proposal to abolish all restrictions regarding conclusion of fixed-term employment contracts as an excessively drastic one. It was rejected also for the reason that the initiators of the proposal had not provided for a mechanism of prevention of abuse of fixed-term employment contracts, which is required by EU Directive 1999/70/EC on fixed-term work;

c) *to permit overtime work*. The fate of the proposal to liberalise overtime work was similar, although the goals it pursued were linked more with the overall tendencies of liberalisation of labour relations rather than with the economic crisis. Prohibition of overtime work should help maintain employment or encourage employers to create jobs. In fact, overtime work is unreasonably prohibited in Lithuania, which creates preconditions for employers and employees to conceal it. The Government attempted to take account of the intention of employees, taking shape during the period of economic growth, to permit employees to work more hours if they request so. The permission to agree on overtime work under collective agreements existed previously, but the proposal to permit individual agreements was rejected by the Parliament in 2009. Instead, the permitted duration of overtime work was increased from four hours in two days up to four hours per day.

The 2009 amendments to the Labour Code implemented only a part of the proposals of the Government concerning liberalisation of labour relations. 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 except that a large number of such collective agreements would be concluded and they would change the look of labour law.

2) ***2010 - outcome of social dialogue:***

The 2009 amendments to the Labour Code were of a provisional nature; hence the issue of liberalisation of labour law did not disappear from the reform agenda. At the end of 2009, a national agreement was signed with social partners, under which the Government, while seeking to secure support for its economic reforms, assumed the commitment not to submit any unilateral proposals to the Parliament until 2011, unless they were approved by the Tripartite Council. In 2010, the Government presented its proposals to social partners suggesting to negotiate on increase of flexibility in the field of working time and overtime work, promotion of youth employment, conclusion of fixed-term employment contracts, guarantees to employees in the event of redundancy (notification time limits, severance pay, guarantees to specific categories of employees). The negotiations of 2010 attempted to rectify the failures of 2009. In exchange for the proposed liberalisation measures, the Government proposed to negotiate on a package of 'compensation' provisions, that is, consolidation of the position of employees' representatives in enterprises (including participation in management bodies of enterprises and holding of strikes), improvement of the mechanism of labour disputes, compliance with and control of labour legislation. Employers did not produce any significantly new proposals, because their standpoint was well represented by the Government itself. Trade unions agreed to negotiate and presented their own proposals. In light of the mentioned provision of the national agreement, it should be noted that it is only thanks to active use of the negotiations method that a compromise was reached, namely, to secure approval of a new reform law – the Law Amending and Supplementing the Labour Code of 22 June 2010. Due to the fact that the Law is the outcome of the social compromise, some of its provisions are clearly more favourable for employers, and others – for employees as they compensate for the losses of the latter.

2[a]) measures of liberalisation of labour relations*:*

a) Working time. The most decisive victory of the employer's interests can be noted in the field of regulation of working time. It should be pointed out that Lithuania's labour law used to regulate working time sufficiently strictly. The tradition of five working days per week and eight-hour working day was inherited from the Soviet labour law. It was very strict in regulating any deviations (work on rest days, overtime work, etc.). Additional restrictions were placed on employers also by the requirements of a minimum uninterrupted rest period stipulated by EU directives. The increased 'density' of legal norms made labour organisation complicated as employers had to ensure both uninterrupted rest period, and the duration of a working day not exceeding 8 hours as well as the duration of a working week not exceeding 40 hours, whereas tailoring of working time to individual needs was limited. The 2010 amendments to the Labour Code introduce flexibility in respect of working time in a rather simple manner – by cancelling restrictions for introduction of summary recording of working time in enterprises. Having regard to the opinion of representatives of employees, the employer is granted the right to unilaterally introduce summary recording of working time in the enterprise. Certainly, such a possibility restricts the freedom of employees to plan their time (especially in respect of the employees working in several enterprises, the employees having obligations to their families), but it enables the employer to make rational use of workforce, plan employment, adapt to structural or seasonal fluctuations in the market;

b) *Overtime work*. Regulation of working time is also associated with another flexibility measure, namely, liberalisation of overtime work. While in 2009 employers failed to obtain a permission to individually negotiate on overtime work with employees, the 2010 amendments to the law provided for such a possibility. Nevertheless, this novelty is not as liberal as it is in well-developed Western countries, as the employer is not granted the absolute right to unilaterally assign overtime work. Unless such overtime work is a *force majeure* case, it is possible 'subject to the request or consent of an employee'. Leaving the issue of the difference between the request of the employee and the consent of the employee open to discussion, it will be necessary to decide in practice whether an *ad hoc* or a long-term consent of the employee is meant here, whether such a consent may be withdrawn, whether it is possible to give consent on one occasion and refuse to work overtime on the subsequent occasion, etc.;

c) *Fixed-term employment contracts*. The repeated attempt to liberalise conclusion of fixed-term employment contracts in the 2010 amendments to the Labour Code was successful only partially. Trade unions offered a stout resistance to the general permission to conclude fixed-term employment contracts, but agreed

to the proposal to permit conclusion of such contracts temporarily (until 31 July 2015) in respect of newly created workplaces.

2[b]) 'Compensatory package' for employees. It should be pointed out that along with easing the burden of employers, the 2010 amendments to the Labour Code also attained certain achievements on part of employees. Among such achievements, a mention could be made of some new provisions of the Labour Code obtained 'in exchange' for the liberalising provisions. The most important provision is related to strikes. In Lithuania, regulation of strikes is sufficiently strict. Trade unions were successful in modifying this procedure to their own needs by forcing to adopt the provisions permitting greater freedom in declaring strikes at the sector level. It should be pointed out that sectorial bargaining and sectorial collective agreements have been subject to regulation in the Republic of Lithuania since 1994, but until 2010 there existed no special norms regulating organisation of strikes at the sector level. Therefore, the decision achieved by trade unions is indeed beneficial for them – the right to take a decision on calling of a strike at the sector level is granted to the trade unions of the sector and, as opposed to declaration of strikes in enterprises, voting of neither employees, nor members of a trade union is mandatory under the law. The sole restriction is the requirement that such issues must be discussed by the Tripartite Council of the Republic of Lithuania before the strike. This regulation is a large step forward in ensuring development of social dialogue in Lithuania, because it is due to the complexity of the strike mechanism that collective bargaining continuously fails to shift from the dominant level of enterprises to the sector level.

An interesting novelty is provided for also in regulation of individual employment contracts. For the first time, Lithuania's labour law stipulates the mechanism of suspension of an employment contract in the cases when the employer fails to comply with its obligations in respect of the employees. Where the employer fails to regularly pay wages violates laws, collective agreements or employment contracts, Lithuanian labour law previously provided just for the right of the employee to initiate termination of the employment contract.

> *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 to 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.

3) ***2011 – legitimation of the new form employment – temporary work:***

Significant this year, the initiative should be seen as the adoption of new law- On temporary work. This employment form practically was known for about 10 year in Lithuania, but only legalised was in 2011. During discussions in the Parliament the opinion of social partners principally separated. Therefore, the new law copy-paste repeats the provisions of EU directive. As more original could be mention 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 5 working days.

4) ***2012 - continuation of the attempting to liberalise the labour law:***

The Government of the Republic of Lithuania this year has continued to declare their intention to liberalize labour relations, to provide more economic freedom for business. But it is clear that the forthcoming Parliament elections stopped this process. Therefore, during this year were adopted some amendments of the Labour code, but their hardly could be called as liberalizing labour relations, moreover maybe in opposite:

a) introduced a new type of parental leave - *adoption leave* – foster mother or foster father after adoption is granted 3 months leave with the social benefit of 70 per cent her/his wage;

b) *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.

5) ***2014 – 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 was 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 nowadays labour relations, it is important to take care of technical side: eliminate inconsistencies, gaps, undesirable practices (case law), simplify regulation and reduce bureaucracy costs. Also, 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, as following: more flexible regulation of working and rest time, variety of forms of employment and contracts of employment, mobility of the workplace, modification and termination of employment contracts, etc. Finally, these aforementioned elements of flexibilization cannot be implemented without the role of social partnership, 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.