Jurisprudencija, 2002, t. 25(17); 143–147

THE PROBLEMS OF MODIFICATION OF ESTONIAN LABOUR LAW

Doctor iuris Gaabriel Tavits

University of Tartu, Faculty of law
Naituse 20, 50409 Tartu; ph. +372 7 375984; fax. 372 7 375983
Estonia

Pateikta 2001 m. lapkričio 30 d.
Parengta spausdinti 2002 m. gegužės 16 d.

Recenzavo Lietuvos teisės universiteto Teisės fakulteto Darbo teisės ir socialinės saugos katedros vedėja prof. dr. ***Genovaitė Dambrauskienė*** *ir šios katedros doc. dr.* ***Rasa Macijauskienė***

Abstract

In the process of accession to the European Union the changes in legal system are needed. In Estonian legal system especially in labour law the harmonisation process has been started, but not finished yet. One important aspect in this modification and harmonisation process is also the fact that in spring last year the Estonian parliament has ratified the Revised European Social Charter. European Social Charter also prescribes for the government certain obligations concerning employment and social matters.

In addition to that fact, the changes in the legal system are needed due to the changes in the economy as a whole. As the labour law is very closely connected to the economical situation, the changes that are connected with the changes in economy are needed at first.

1. Labour law

In the process of modification of the Estonian labour law one should distinguish between two periods: a) from 1990 – till 1996 and b) from 1996 up to now. After the Estonia regained its independence it was clear, that amendments in legal regulations of labour relations are needed. As the whole labour legislation at that time was meant for planned economy those rules did not or did not effectively function in the situation of market economy (transformation economy).

The first period in the modification of labour law was mainly the period where the old soviet labour code was replaced by the different separate labour laws. During that period all the important labour laws were adopted. The most important law among these was Employment Contract Act [1] that determined all the necessary aspects in individual employment relationship like conclusion of an employment contract, amendment in employment contract and the termination of an employment contract. During that period the different acts were adopted like Holidays Act [2], Working and Rest Time Act [3], Collective Agreements Act [4], Disciplinary Punishments Act [5], Collective Labour Disputes Act [6], Individual Labour Disputes Act and also Working Environment Protection Act. At that time the rules and the principles of the European Labour Law were not taken into account. The main aim at that time was to create as fast as possible the legal framework for employment relations in the situation of the market economy. Mainly to the end of the year 1996 all the necessary labour laws were adopted and the legal framework for labour relations was established. Only question that was not solved at that time was the legal regulation of responsibility of workers for the damages that were caused to the employer in the course of fulfilment contractual obligations. Here the rules from the old soviet labour code were still

applicable.

The second period of the modification of the Estonian labour law began in 1996. This period is lasting currently. At that time the basic idea was to create the new labour code which would be in line with international standards and EU standards. Actually this idea was not successful one. There is no draft of a labour code. At the same time when the preparatory works began to draft the new labour code, also the work on the draft of the contract law began. This rise the question about the place of the employment contracts in the system of contracts in general. Also the government of the minority at that time did not pay much attention to the modification and harmonisation process in labour law. Since spring the 1999 as the new government was created also the process of modification of the labour laws started again.

At the moment in Estonia three new laws which will determine the legal framework of employment relations is adopted. These laws are as follows: Act on Working Environment and Working Safety, Working and Rest Time Act and Holidays Act. The three new laws are in line with requirements of the EU directives. Concerning the harmonisation process the basic problem with the Working and Rest Time Act was that maximum allowed working time was not in line with the EU standards. According to the EU directives the maximum allowed working time can be 48 hours per week. The Estonian Working and Rest Time Act allows working time up to 60 hours per week. The new Working and Rest Time Act also prescribes that the maximum working time per week can be up to 48 hours. This amendment brought up heavy discussions. The employers argued that such amendment would have a consequence, that the employees will get less salary as they are getting at the moment. The trade unions recognised, that the new rules on working time are needed, but this means that also the wage policy in enterprises should be amended. Also some politicians did not agree with new maximum limit for working time.

The basic problem is that the labour legislation concerning the working time, which is in force at the moment, allows for an employee to work under two different employment contracts. It can be distinguished as 1) main workplace and 2) additional workplace. With the new working time regulation it is clear that in normal case an employee would have only one workplace and the employer has to pay higher salary he or she did before. The new Working and Rest Time Act was passed by the parliament at the beginning this year and will be applicable since the January 1, 2002. Although the new law prescribes that an employee can work per week as a maximum 48 hours, the new law allows that many persons who are working in subordination or under the employment contract are not covered by the rules about the overtime work. According to the § 1 section 3 of the Working and Rest Time Act the employees, to which the rules about the overtime work are not applicable, are: 1) employees who can themselves make decisions and who according to the employment contracts or internal rules of an enterprise, themselves can determine the working time and their working time has not been determined directly or indirectly through the decision of an employer or through the agreement; 2) the employees who in churches and in other religious communities are responsible for the confessional services. According such determination almost all employees could be excluded from the application of the rules about the overtime work. Almost all of the employees are free to make the decisions in the course of fulfilment work tasks and it is also possible to make an agreement that the working time will depend on the circumstances. This means that although the law prohibits working time over the 48 hours the real situation could be, that such kind of limits will not be applied.

The Holidays Act regulates all the questions that are connected with annual vacations and with parental leave. In that law the EU directives concerning the maternity protection and equal treatment between men and women have been taken into account.

The Working Environment and Working Safety Act was prepared in line with EU directives concerning the safety of the employees. The Act mentioned above is in force since 1999 and is the only one of all the labour laws, which is completely in line with EU standards and which guarantees the protection of employees' rights in questions of working environment.

The most problematic situation at the moment is with the Employment Contract Act

connected. The new draft, which has been prepared by the Ministry of Social Affairs, includes all the necessary rules concerning the conditions about the individual employment relationship. In this new draft the directives on collective redundancies, on condition of employment and directives concerning the transfer of undertakings or part of enterprises have been taken into account. So far there is no clear agreement between Ministry of Justice and Ministry of Social affairs about the place of employment contract in the system of contracts. The absence of such agreement is quite serious obstacle for harmonisation and modification process in individual labour law, because the Employment Contracts Act that was passed in 1992 does not contain any rules e.g. on collective dismissals. The legal regulation concerning the transfer of the undertakings and parts of undertakings is also not very clear one. There are also lack of rules concerning the rights for consultation and information. In the valid Employment Contract Act there is only one article, which only says that in case of reconstruction of the enterprise, changing owner etc the employment contracts should be taken over. It is rather difficult to say which would be the final outcome of such discussion and when the parliament will adopt the new Employment Contract Act.

The draft of the new Employment Contract Act was given to the parliament in this year. The new draft of the Employment Contract Act is more liberalised as this is the case by the Employment Contract Act that is force at the moment. The new draft does contain more rules, which are in line with general principle of contract law e.g. the principle of good faith. More precisely are determined the duty of loyalty of an employee. Also the rules concerning the material liability of an employee are contained in that draft. Mainly the rules concerning the material liability are constructed taking into account the laws and the practice of Germany. The new draft will abolish the system of disciplinary punishments. The system of disciplinary punishments, which is applicable at the moment, is somehow similar to the system, which was contained in the old soviet labour code. In the discussions about the future of the Estonian labour law also the question about compatibility the disciplinary punishments system to the constitution was pointed out. This discussion did not have any concrete solutions, but one aspect was clear – if an employment relationship is a legal relationship of private autonomy, then the parties should themselves agree about the principles of the disciplinary measures. This is not the question of the regulation by the law, but mainly the question of the collective agreement. At the moment the draft of the Employment Contract Act does not contain any rules concerning the disciplinary measures, but this could be one of the questions on which the parties could reach agreement in the collective agreement

Especially the question of liberalisation of working conditions is an important question. How far can we go with liberalisation, how much freedom should we give to the parties of an employment contract to determine the necessary working conditions. This question could be answered more easily, if we do have a well–developed system of collective agreements. At the moment Estonia does not have such system, and therefore the legal regulation through the laws is very important one. The new labour laws, which are already adopted, give to the parties of a collective agreement quite many opportunities to make different or additional rules to those that are contained in laws.

One important question is the rights of employees in the case of insolvency of an employer. At the moment the Estonian legislation guarantees the compensation of the wages and other payments only in case the court has made decision, that an employer is in bankruptcy. If there is no such court decision, then the employees do not have any right to get compensation from the guarantee fund. The guarantee fund operates by the government and is basically financed from the state budget. The system will be slightly changed, if the law on employment insurance will be in force. In that case the unemployment insurance fund will be responsible for the payments in case of bankruptcy of an employer or in the case the procedure of the bankruptcy will be closed with the court decision due to the lack of assets that are necessary to cover the costs of the bankruptcy procedure.

2. Equal treatment

In the process of harmonisation and modernisation of the Estonian labour law important question is the equal treatment between men and women. At the moment in Estonia there is no concrete law concerning the equal treatment between men and women. The basic rule for equal treatment can be found in the Constitution of the Republic of Estonia, which says that all the persons are equal. In addition there are some provisions concerning the equal treatment in Employment Contract Act and the Wages Act. In Estonia there does not exist any case law concerning the equal treatment. Although it is well known that there exist unequal treatment between men and women any lawsuit could not be mentioned here. It is e.g. unclear what can a discriminated person demand from an employer in case the employer refuses to conclude an employment contract because a person is a man or a woman. Can a discriminated person demand a sum of money from the employer or can he or she demand e.g. conclusion of an employment contract? To create the exact legal framework for equal treatment the Ministry of Social affairs has prepared separate law on equal treatment. This draft of law concerns not only the question equal treatment in labour and social security relations, but also in field of education and other fields of social activity. In the draft of law equality between men and women it has been foreseen, that the institution of the equality commission should be created. This commission will deal with cases of discrimination. In a new draft law on equal treatment it has been foreseen that the discriminated person can claim compensation. In the law will only the minimum level of the compensation established. The maximum level of the compensation will depend on the circumstances. It is hoped that during this year the parliament adopts that law and since January 1, 2002 it should be in force.

Conclusions

The modification of Estonian labour law is in process. At the moment the most important modification have been made in field of individual labour law. So far the modification process has not yet reached the collective labour law. One new law could be mentioned here. This is the law about the trade unions, which determines the rights and obligations of trade unions and gives clear legal regulations for the activities of the trade unions. Modifications are needed especially in legal regulations of strikes and lockouts. The law, which regulates these questions, was already in 1993 adopted and it is clear that the regulation, which can be found in that law, is not in accordance with the situation we have at the moment.

LITERATURE

1. **Republic** of Estonia Employment Contracts Act // Riigi Teataja, 1992. N°. 15/16, 241, amended by the Following Acts.
2. **Republic of Estonia** Holidays Act // Riigi Teataja,1992. N°. 37-481.
3. **Republic of Estonia** Working and REST Time Act // Riigi Teataja,1994. N°. 2-12.
4. **Republic of Estonia** Collective Agreements Act // // Riigi Teataja,1992. N°. 14-20.
5. **Republic of Estonia** Disciplinary Punistiments Act // Riigi Teataja,1993. N°. 26-44.
6. **Republic of Estonia** Individual Labour Dispute Resolution Act // Riigi Teataja,1996. N°. 3-57; 1993, N°. 26-442.

☞☞☞

Estijos darbo teisės tobulinimo problemos

Dr. Gaabriel Tavits

Tartu universitetas, Estija

SANTRAUKA

Estijos darbo teisės norminių aktų pakeitimus galima suskirstyti į du laikotarpius: 1) 1990–1996 m.; 2) nuo 1996 m. iki šių dienų.

Pirmuoju laikotarpiu buvo stengiamasi pakeisti senus tarybinius įstatymus ir priimti naujus norminius aktus, reglamentuojančius teisinius darbo santykius. Tai Darbo sutarties, Darbo ir poilsio laiko, Atostogų, Kolektyvinių sutarčių, Kolektyvinių ir individualių darbo ginčų, Saugos darbe, Drausminės atsakomybės įstatymai.

Pagrindinė antrojo laikotarpio idėja buvo sukurti tarptautinius ir Europos Sąjungos standartus atitinkantį darbo kodeksą. Deja, toks kodeksas iki šiol neparengtas.

Tuo pat metu buvo rengiama ir nauja Darbo sutarties įstatymo redakcija. 1999 m. priimti nauji Darbo saugos ir aplinkos, Darbo ir poilsio laiko ir Atostogų įstatymai. Nors šie aktai ir atitinka Europos Sąjungos standartus, tačiau pagal juos darbuotojas gali dirbti iki 60 valandų per savaitę, o tai prieštarauja 48 valandų normai.

Ypač daug problemų dėl Darbo sutarties įstatymo. Estijos teisingumo ir socialinių reikalų ministerijos iki šiol nesutaria dėl darbo sutarties vietos bendroje sutarčių sistemoje. Taip pat opus klausimas, kiek liberaliai tarp darbo sutarties šalių gali būti sprendžiami darbo sąlygų nustatymo klausimai. Šiuos klausimus būtų galima išspręsti kolektyvinėmis derybomis, bet Estijoje gerai išplėtotos kolektyvinių derybų sistemos šiuo metu nėra. Iki šiol nepradėta tobulinti ir kolektyvinių santykių norminė bazė.

Neišvengiamai kyla problemų ir dėl darbuotojų teisių darbdavio nemokumo atveju.

Teisės derinimo procese Estijoje daug dėmesio skiriama vyrų ir moterų lygių galimybių klausimui. Iki šiol Estijoje nėra atskiro šį klausimą reglamentuojančio įstatymo, tačiau tikimasi, kad jis bus priimtas dar iki 2002 m.