Labour Courts in Lithuania: possibilities and perspectives

Introduction

Lately there are more and more discussions about labour courts in Lithuania. On the one hand, this may be due to the fact of the new Labour Code coming into effect and the novelties laid out in it, on the other hand, the need for labour courts is a natural outcome of the integration into the European Union given that more than half European Union states have specialized courts hearing only labour disputes. The third reason that prompted the discussions on this topic is noticeably growing and changing subject matter regulated by the labour law.

Lately one can often find reflections in foreign literature about the multiple reforms of legal regulation of labour relations, manifesting themselves by the expansion and renewal of the basis of this regulation, abandoning of the old regulation methods and introduction of the new ones, changing of the work (service) functions, changes in the labour law structure, modifications of mutual interactions of individual institutes and sub-institutes, review of traditional notions, ideas and concepts, or otherwise called – integration of labour law. This phenomenon in Lithuania is not yet widely analysed and evaluated by the law specialists and scientists. However, taking into consideration economic and social changes that are quickly gaining momentum, especially in the business and service (industry) fields, this particular circumstance could exactly be the turning point in the discussion about the founding of the specialized labour courts. Correspondingly, due to such wider-reaching circumstances of legal labour relations, the general competence courts are not sufficiently competent to take decisions concerning labour disputes, and there arises a real and objective need for the specialized courts.

The purpose of this writing is to make a systemic and conceptual analysis of the particularities of the legal regulation of current court system in Lithuania, which would give premise for the establishment of labour courts in Lithuania, as well as to indicate the social, economic and legal basis for the functioning of such specialized court and to answer to the main question whether labour courts are currently necessary in Lithuania.

Possibilities for the establishment of labour courts

Currently there are three main legal acts regulating the hearing of labour disputes. First is the Constitution as the highest legal act in the state, which is also the basis for all the other normative legal acts. Second, which is no less important in the context of legal regulation of labour disputes, is the Labour Code, which establishes the concept of a labour dispute, its subjects, basis for arising and the procedure of pre-trial investigation. The hearing of labour disputes in court is regulated by Section XX of the Civil Procedure Code, which concerns exceptionally the determination of particularities in the hearing of labour cases.

The latter two legal acts (Labour Code and the Civil Procedure Code) are only prerequisites for the hearing of labour disputes but they do not serve as the basis for the establishment of specialized labour courts.

Article 111 of the Constitution provides for the possibility of establishing labour courts in Lithuania. This article lays out the main constitutional basis of the court system of the Republic of Lithuania. First part of the article provides that there are the following courts in the Republic of Lithuania: the Supreme Court of Lithuania, The Court of Appeals of Lithuania, circuit and district courts. The second part of the article is stated that specialized courts may be established for the hearing of cases of individual categories. The Constitution
does not explain how the specialized courts should be established, i.e. whether as a separate subsystem or as a separate specialised courts.

It should be noted that the court system indicated in Article 111 of the Constitution is unanimous, and the second part of the article, which is formulated rather generally, gives the freedom to the legislature to choose at its discretion the most suitable solution, i.e. to pass a separate law laying out the legal status of courts, procedure of formation, court procedures and the like.

Consequently, further to the properly expressed will of the legislature, i.e. further to a law, there may be established specialized labour courts. It is up to the will of the legislature whether such courts will be part of the general competence labour courts system or whether there will be a separate system with separate case hearing levels (appellate, cassation), legal status, procedure of formation and court procedure.

Further, the possibility of establishment of labour courts is revealed in the Action plan for the national support and protection of human rights in the Republic of Lithuania approved by the decision No. IX-1185 of Seimas of the Republic of Lithuania of 7 November 2002. Section 3 of this action plan is devoted to the implementation of the right to work and the right to safe and healthy working conditions, providing for faster and more qualified procedures of hearing labour disputes, including the specialized labour courts. Currently the Ministry of Justice of the Republic of Lithuania, the Ministry of Social Security and Labour and the National Court Administration have been commissioned to analyze the possibility of the establishment of specialized labour courts, terms and other conditions, and to present suggestions to the Government of the Republic of Lithuania. By 1 May 2004 the latter should present its conclusions concerning the establishment of labour courts in Lithuania and concerning the draft of the Labour Courts Law to the Law and Law Enforcement Committee, Human Rights Committee and the Committee of Social Matters and Labour of the Seimas of the Republic of Lithuania. Since there have not yet been received any conclusions concerning the currently analysed problem, it may be said that there is no official state government position concerning the issue of the establishment of labour courts.

It is obvious that there is legal basis in Lithuania for the establishment of labour courts since such a possibility is laid out in the highest law of the Republic of Lithuania – the Constitution, and the other legal acts constitute the material and legal basis for the realization of this possibility.

Conducting further analysis of the possibility of establishment of labour courts in Lithuania it is important to find out whether the establishment of such courts is compatible with the obligations of Lithuania and the conditions of joining the European Union, and in general, what is the practice of establishment such courts according to the European Union law.

There is no a separate section directly related to the functioning of national courts in the accession to the European Union documents. These provisions are partially touched upon in the section “Cooperation in the areas of justice and internal affairs”. The situation in the area of the protection of human rights is essentially evaluated favourably in the latest notice of 2002 of Commission for Lithuania, including one of the main standards – i.e. state guaranteed legal defence in civil, administrative and criminal cases.

The main requirement of the European Union in the area of the court system is that the member state must ensure the application of the European Union law, and the ways and means how to achieve that is exceptionally at the national discretion.
When the direct application of the European Union law is introduced in Lithuania, due to certain circumstances (e.g. different labour law traditions) it may turn out that due to the gaps or shortcomings in the national court system or due to some other similar reasons, the direct application of certain compulsory European Union laws is not ensured, especially in the areas of horizontal competence (e.g. the so called “effective court protection” when the individuals right to participate in the process independently is interpreted differently, when the decision is taken with regard to that person). The solution of such a problem is more related to the procedures of the national court process and not to the organization of the court system. Therefore, the European Union law is not oriented towards the regulation of the court system.

Moreover, the European Union and European Community treaties contain the established general principles of freedom, democracy, respect for human rights and freedoms, which are common for all the member states and arising from their national constitutional traditions (Article 6 of the European Union treaty). The goal to make those provisions more detailed and systematic in order to avoid significant gaps between legal regulation in individual European Union states (including the area of organization of courts) was one of the main motives that stimulated the drafting of the Charter of Fundamental Rights of the European Union (announced in the year 2000). The text of this charter is not unique because it consists (transferred) of the texts of various already existing legal acts that are in force in the European Union. The status of the Charter is also peculiar, because officially the Charter is not legally compulsory, but its content consists of the legally compulsory acts or significant precedents. The main legal act in this charter is the European Convention on Human Rights, which, in turn, is compulsory to all the member states of the European Union. The adherence to this convention is ensured by the European Court of Human Rights.

Despite the mentioned, the court systems of the member states of the European Union are very different because essentially the determination of the court system structure is the matter of internal competence of the state. The European Union law does not regulate these issues and does not form a unanimous practice in the states of the European Union. It was mentioned that the main requirement of the European Union is that the member state must ensure the application of the European Union law, and the ways and means are exceptionally at the discretion of the national competence.

It may be concluded from the mentioned that the obligations and conditions of Lithuania associated with its accession to the European Union do not contradict to the possibility of establishing specialised labour courts in Lithuania, especially if the functioning of such courts will be oriented towards the direct application of the legal norms applicable in the European Union.

Continuing the discussion about the possibilities of establishing labour courts in Lithuania there should be emphasised not only legal but also social prerequisites. The Constitutional court of the Republic of Lithuania indicated in its decision of 14 January 1999 that the duty of the state is to ensure the cooperation of the subjects of labour relations on the basis of social partnership and to protect the interests of the worker as a weaker party. The scale of values instituted in the Constitution determines that the legal norms regulating labour relations and areas related to them should provide for not only the protection of the employee in the work process but also to ensure the entire spectrum of the guarantees of the working person in order to avoid the unfounded domination of one party in the labour relations and the dependence of the other party.
Although this decision of the Constitutional court discusses more about the labour legal relations, it also reflects the necessity to specifically regulate labour disputes, which should be taken into consideration in establishing specialised labour courts. In the legal doctrine the labour cases are assigned to those, whose hearing is related to the protection of public interest because those cases arise from the material legal relations, the subjects of which have limited possibilities to freely dispose of their material rights and obligations.

In the cases arising from the labour relations the subjects, who do not have possibility to freely dispose of their material rights, may not do that in the civil procedure as well. This is another reason why labour disputes may not be heard as other civil disputes. The procedural norms of labour courts could be as a means that helps to get rid of the mentioned shortcoming and to solve the labour cases in less formal way as other case especially taking into consideration the sensitivity of the labour relations and their social-economic significance.

According to the current position of the legislature concerning the hearing of the labour disputes the labour cases are assigned to the category of non-dispositive case because there are limited possibilities for the parties to use their procedural rights. By taking care of the stability of the social relations the legislature distinguishes labour disputes from the other civil disputes and determines exceptions for their hearing. Labour disputes destabilize labour relations and cause problems for all subjects of labour dispute, therefore, in hearing them, it is necessary to evaluate and take into consideration their specific nature. Moreover, it was mentioned that undoubtedly there exists the public interest in the hearing of labour cases, which especially demonstrates itself in the form of social dialogue. Also, in the contemporary legal doctrine many law institutes are analysed and evaluated as the means ensuring the social cooperation, social peace and balance of interests. The society is interested to ensure its internal stability so that there are as little as possible social and legal disputes, so that its life is regulated by the just legal norms and so that they are correctly applied.

Consequently, in hearing each labour dispute or a conflict that arose in labour relations, next to the private interest there arises public interest too. The employer and the employee are the most important social partners; therefore their dispute must be solved in as much peaceful way as possible preserving the possibility of cooperation. The parties of the labour disputes from the very beginning have unequal possibilities because the employer in terms of social and economic aspect is far and away a stronger party and the end of this dispute most of the time is related to the means of living of the employee’s family, therefore it raises social tension and touches upon the most sensitive public interests.

After the analysis of the court systems of the member states of the European Union one may notice that the legislature of the ten states, namely Ireland, Austria, Belgium, Great Britain, Italy, Spain, Germany, Finland, France, and Sweden, have established the specialized labour courts that function mostly as the institutions of reconciliation and coordination of social interests. Often the functioning of such courts is based on the principle of social partnership and tripartite cooperation, i.e. the cases both in the pre-trial level and in courts are heard by colleges consisting of the professional judge and non-professional lay judges that are elected and appointed by the organisations representing the interest of the employees and employers. These organizations take active part not only in forming the labour courts but also in preparing for the conflicts themselves. Social and tripartite cooperation in labour disputes terminate long lasting and fruitless disputes and discussions or create conditions for taking halfway decisions and perform the function of the regulation of post-conflict or the conflict. It is obvious that the active cooperation of the social partners both mutually and in relation to the state is one of the tendencies of labour disputes and in Lithuania – one of the necessary goals. Labour courts and
the representatives of the employees and the employers could be as one of the most effective means of the implementation of the social partnership.

In summary concerning the possibilities of establishing the labour courts in Lithuania it should be said that both the principles of the court system established in the Constitution of the Republic of Lithuania, both the normative legal basis of the European Union allow to state that there is legal basis for the establishment of such courts. The social and economic significance of legal labour relations, the possibility to actually ensure the cooperation of employees and employers not only in the work process but also in solving the conflicts arising in the course of such process and at the same time the goal to implement the particularities of the resolution of labour disputes, which may not be achieved by the means of civil procedure, are the strong arguments in favour of the establishment of labour courts.

**Perspectives of Labour Courts**

In Lithuania the labour disputes, i.e. the disagreements between the employee and the employer concerning the interpretation and application of the conditions indicated in the laws, employment contract and the collective agreement, are resolved by the general competence courts. Until 12 July 2000 according to Articles 234-254 of the Code of Labour Laws the labour disputes were heard by the committee of labour disputes, company’s trade union committee and then the court. The committee of labour disputes consisted of the equal number of members delegated by the employer and the trade union committee. Such a way of resolving labour disputes was suitable when 100 percent of employees were the members of the trade union and soon it became ineffective because in most companies there were no trade unions left.

On 20 June 2000 the Law on Resolution of Labour Disputes was passed, which was supposed to serve in adjusting the legal regulation to the particularities of the society relations of that time, especially taking into consideration the fact that trade unions were functioning only in a few companies. However, despite the good intensions, the law had shortcomings, first of all, due to the procedure of composition of the committee hearing the labour dispute, indicated in it, when such a new committee had to be composed each time to hear each individual labour dispute, and the employee alone, without the assistance of the lawyer, could not properly implement the pre-trial procedures of the dispute hearing, without which the court would leave the claim of the employee untried. The progressive aspects of this law were those that before the start of the hearing of the labour dispute, the disagreements between the employee and the employer had to be solved in the negotiations between the two. However, in order to start such negotiations the employee had to present a written petition concerning the reestablishment of violated rights. However, the legislature did not indicated the deadline for filing such a petition.

The Labour Code that came into force on 1 January 2003 corrected the mistakes of the earlier law providing that each company must compose a permanent, functioning for two years, labour disputes committee composed on the basis of parity from the representatives of the employees and the employer, which hears the labour dispute after the employee was unsuccessful in resolving it in the negotiations with the employer.

It was mentioned that the labour disputes in Lithuania are heard by the courts of general competence: district courts as the first instance courts, and circuit courts as appellate courts or in case of the cases of special categories (e.g. when the amount of the claim exceeds one hundred thousand litas) – as the first instance court and then the appellate instance court- the Court of Appeals of Lithuania, and the Supreme Court of Lithuania as the final and cassation
instance. The Supreme Court of Lithuania forms the unanimous court practice in hearing labour disputes and interpreting and applying labour laws. It should be noted that until coming into force of the new Civil Procedure Code the courts heard the labour cases according to the general procedural norms of civil cases, which did not always match the specific nature of labour cases. The new Civil Procedure Code contains a separate section devoted to the particular nature of hearing labour cases and special procedural norms. This demonstrates the attitude of the legislature towards the particular nature of hearing the labour cases and the special place of such cases in the context of the civil procedure.

The specific feature of the labour relations is the autonomy of the employees and employers. Therefore, when hearing labour cases in court, it is necessary to hear the opinion of the employee and employer organizations and the experts of labour law because, at the moment, many both employers and employees are not satisfied with the decisions of general competence courts, and they appeal those decisions to appellate courts, and the latter overrule many decisions. In evaluating the statistics of the civil cases hearings for the years 2002 and the 1st quarter of 2003, presented by the National court administration, the following tendencies were notices.

Most labour cases are concerning the recovering of the wages (about 60 percent) and returning back to work (10 percent). From all the heard cases almost half were heard in violation of the deadlines indicated in the Civil Procedure Code. These facts demonstrate that the most sensitive part of the labour dispute – economic status and social peace are not achieved as quickly as one wishes, and the formalized civil procedure does not allow to achieve the main goal concerning the resolution of the labour dispute – restitution of the violated rights, which is often also related to the financial interest (recovery of the wages as the main means of living).

It is difficult for the judge of the general competence court to be knowledgeable in all branches of law. Only some judges in the circuit courts of the bigger cities specialize in hearing of labour cases. However, this is not a solution. In the course of the changing structure of social relations and given the fact that the social relations are becoming more complicated, the necessity for the specialized knowledge is inescapably growing in solving the issues arising from such relations. Seeking as effective as possible regulation of relations it is necessary to consider the needs and possibilities of the establishment of specialized courts.

The experts from the European Union countries, where the labour courts are functioning successfully and effectively, that come to Lithuania recognize the necessity of labour courts as a means for the realization and implementation of specialized knowledge. It was mentioned that the new Civil Procedure Code lays out the particularities of hearing labour cases according to which the court defends the interests of the weaker party of the labour dispute – the employee, it may adjudge to the employee the amounts of money or put an obligation on the employer to restore the violated rights of the employee, which the employee, due to the lack of knowledge, he/she did not request to restore but which are laid out in the labour laws. However, the formal nature of the process itself and the shortage of the specialized knowledge is a sufficient obstacle for the successful resolution of labour disputes. The existence of the specialized courts would speed up the process of labour cases and would reflect better their specific nature.

The Constitution of the Republic of Lithuania and labour laws constitute sufficient guarantees of the right to work. However, these guarantees are only a prerequisite without a sufficient economic basis. Labour relations are not stable. There is a possibility to join trade unions and
protect one's own labour rights. However, trade unions are weak, they are not unanimous, they do not have strike funds, insurance from unemployment and other funds, there is no necessary social dialogue, branch tariff agreements. The declared equality of the parties of the employment contract would be effective if the offer of labour force would be lower or equal to the need. When the labour market is overstocked the employee is the weaker party of the employment contract and should be protected by the state. When the right to work is guaranteed the legal regulation of labour relations is improved especially after coming into force of the Labour Code. One of the perspectives of the labour courts in Lithuania is the proper implementation of the guaranteed right to work.

At the moment in Lithuania next to the general competence courts there are functioning specialized administrative courts that were established in 1999. This need for the independent court system was based not only on the specialization, need for the special knowledge but also on the specific purpose of the administrative justice. Differently from the general competence courts that are meant to serve in resolving mutual legal disputes of society members, the administrative courts control the legality of the activities of the subjects of public administration, prevent the violations of human rights and play an important preventive function of the protection of human rights. As it is indicated in the conclusion of the work group composed by the Law and Law Enforcement Committee of the Seimas of the Republic of Lithuania “Concerning the Improvement of the Court System of the Republic of Lithuania”, almost four years of experience of the administrative courts allows to state that the decisions of the legislature to distinguish administrative justice from the general justice system proved to be right.

Such a conclusion also allows to think that the properly chosen court model for the hearing of labour disputes by establishing specialized labour courts would also help to achieve more effective, efficient, professional (in terms of deeper knowledge of labour law) hearing of labour cases.

Although in this writing I presented only positive arguments concerning the establishment of labour courts in Lithuania, this does not mean that there are no counter-arguments to the presented thoughts. This idea of establishing labour courts was not supported when the group of researchers from the Lithuanian Law Institute, further to the commission of the Ministry of Justice of the Republic of Lithuania and performing the United Nations development program as well as implementing the National human rights support and protection action plan, performed an analysis of the possibilities of establishing specialized courts in Lithuania for hearing labour cases. In the course of the analysis it was determined that labour cases form only a small percentage of all cases heard in courts. From 1998 till 2002 the number of labour cases decreased by half. On average, one district court judge hears from six to ten such cases per year. The sociological survey of the opinions of Lithuanian lawyers shows that our legal society (especially the employees of law institutions that encounter the practical application of labour laws) is in favour of the improvement of the quality and effectiveness of hearing the labour cases and has no doubts that the introduction of the specialization in hearing the labour cases would be purposeful. On the other hand, many respondents consider that the most effective solution would be the creation of separate court divisions (departments, colleges, etc.) within the structure of the larger general competence courts, and in smaller courts – appointing of individual judges for the hearing of labour cases rather than establishment of an independent labour justice system. Moreover, that the specialized labour courts hearing labour disputes in many foreign countries function as a constituent part of the general competence courts – section, college – while only a few states (Ireland, Austria, Germany and Israel) have separate labour courts, and the cases there are heard both by professional judges and lay judges that have equal rights.
In fact, one more of obstacles for the establishment of labour courts is also the economic situation of our state. Due to the financial and economic conditions it is very unlikely that it would be realistic to establish in Lithuania in the nearest future such specialized labour courts as they exist in many European Union states. However, the existence of judges specializing in the hearing of labour cases is possible in individual or all court instances. When establishing specialized labour courts there should also be important both social and tripartite cooperation as the principles of the contemporary legal system, and they should be taken into consideration when forming the composition of such courts, regulating the particularities of hearing individual cases and the like. It is unlikely that former lay judges, that currently in the contemporary labour law correspond to the representatives of the employee and employer organizations, would come back to the hearing of labour cases in Lithuania, although they play an important part in the labour courts of foreign states. On the other hand, giving the hearing of the case to the specialist that has not only legal education but also the experience in the area of labour law, research and teaching experience would create the basis for more effective hearing of labour disputes.

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