The Implications of the EU Labour Law in Latvia

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The aim of this article is to describe and provide analysis on the implementation, enforcement and application of the EU labour law norms implemented by the Labour Law regarding certain fields, particularly, gender equality, non-discrimination, working time, obligation to inform and consult workers' representatives and protection of young people at work. The article elaborates only on certain aspects of the mentioned fields of the EU labour law, mainly from the perspective of national courts' rulings with an aim to provide an insight on the legal developments arising from judicial application of the EU law norms and interpretation of national law in the light of the EU law.

Keywords: EU labour law, implementation and enforcement, application by national courts, gender equality, non-discrimination, working time, information and consultation, transfer of undertakings, young people at work.

Contents

Introduction

Latvia become the Member State of the European Union (EU) on 1 May 2004 while the new Labour Law, which implemented the most considerable part of the EU labour law *acquis,* was adopted in 2001[1] and came into effect on 1 June 2002.

The Labour Law is the main implementing measure for core EU labour law directives such as on information of employees on the conditions applicable to the employment relationship,[2] information and consultation,[3] equal treatment of part-time and fixed time workers,[4] gender equality,[5] and non-discrimination,[6] protection of young people at work,[7] safeguarding of employees' rights in event of transfers of undertakings,[8] working time,[9] temporary agency work,[10] and collective redundancies.[11]

The aim of this article is to describe and provide analysis on the implementation, enforcement, and application of the EU labour law norms implemented by the Labour Law regarding certain fields, particularly, gender equality, non-discrimination, working time, obligation to inform and consult workers' representatives, and protection of young people at work. The article elaborates only on certain aspects of the mentioned fields of the EU labour law, mainly from the perspective of national courts' rulings with an aim to provide an insight into the legal developments arising from judicial application of the EU law norms and interpretation of national law in the light of the EU law. The article also elaborates on developments of the EU labour law arising from preliminary rulings from Latvia, in particular, in *Danosa* case.

The set of Latvian court judgements used in this article is selective on account of lack of publicly available data base of all national judgements in civil matters. Article mainly elaborates on the decisions of the Supreme Court of Latvia which are published on selective basis at the home page of the court.[12]

1 Gender Equality

1.1 Principle of equal pay and definition of pay within the meaning of equal pay

In the light of gender equality and, in particular, from the perspective of the principle of equal pay between men and women, the Supreme Court had to introduce new approach to the interpretation of national legal norm on calculation of average pay and overrule its pervious judgement.

On 3 June 2009 the Supreme Court issued a decision in a case concerning unlawful dismissal after child-care leave and on calculation of the amount of compensation for work stoppage arising from such context.[13] The court decided such aspect on the basis of Section 75 of the Labour Law stipulating how the average pay has to be calculated for various purposes, such as paid annual leave and compensation for work stoppage. Normally in calculation of average wage employer must take into account all income from work during the preceding 6 months and according to this formula average wage corresponds to the average monthly income over the previous period of 6 months. However, Section 75(3) of the Labour Law stipulates that, if a person has not received any salary during the previous 12 months, the average salary must be calculated not on the basis of the salary provided by an employment agreement but on the basis of the statutory minimum wage. In the current case latter provision was formally applicable, because the claimant was on child-care leave which lasted longer than 12 months, before unlawful dismissal. The Supreme Court in its first decision failed taking into account the aspect of indirect discrimination against women in connection with child-care leave on the basis of the fact that those are women who predominantly use the right to child-care

leave, thus they are more exposed to risk that their average income is calculated on the basis of statutory minimum salary than on the basis of their normal wage.

On 15 December 2010 the Grand Chamber of the Supreme Court,[14] however, overruled its previous (incorrect) decision of 3 June 2009.[15] First, the Supreme Court took into account the aspect of indirect discrimination against women in connection with child-care leave. Second, the Grand Chamber took into account provisions of the EU law, in particular, Article 157 (former Article 141) of the Treaty on the Functioning of the European Union (TFEU),[16] Directive 75/117,[17] and judgment of the Court of Justice of the European Union (CJEU) in case *Seymour-Smith* stating that the concept of pay within the meaning of equal pay comprises compensation for work stoppage on account of unfair dismissal.[18] On the basis of this the court derived the conclusion that compensation for a work stoppage on account of unfair dismissal also constitutes pay within the meaning of the equal pay principle and that in situation of indirect discrimination on the grounds of sex, like in the present case, a compensation for work stoppage is to be calculated on the basis of normal salary of the claimant.

Such decision of the court is important from two aspects. First, the court identified indirect discrimination which is not an easy task for a court belonging to the continental law system, because such concept in the EU law originated from preliminary rulings given by the CJEU in cases coming from the common-law system.[19] Second, the national court acknowledged that there might be a difference in concepts used under the national and the EU law, in particular, concept of pay within the meaning of principle of equal pay is concept defined by the EU law and national concept of pay is inapplicable here.[20]

1.2 Protection against dismissal during pregnancy

Initial approach by the Latvian courts regarding dismissal on the grounds of pregnancy and protection against such dismissal seemed to be very formal thus not providing effective protection and remedies against such unlawful action by employer.

For example, on 26 January 2006[21] Riga City District Court decided that it is lawful to dismiss pregnant worker during probation period if she has failed to inform employer on her pregnancy before reception of notice of dismissal and did it only on the last day before the end to employment relationship. The court considered that the dismissal is lawful also because the claimant could not prove that she had informed employer and it was aware of her pregnancy before giving of notice of dismissal. Besides Section 109 of the Labour Law precludes giving of notice of dismissal to pregnant worker but does not precludes dismissal of such employee. In this case the court failed to take into account Directive 92/85 which unlike Section 109 of the Labour Law precludes termination of employment relationship irrespective of the date of notification of pregnancy. The court also failed to identify the possible discrimination on the grounds of sex, according to Directive 76/207 and 2002/73[22] implemented by Section 29 of the Labour Law. That time the Labour Law did not provide explicitly that less favourable treatment on the grounds of pregnancy constitutes direct discrimination based on sex.[23] The court also did not apply reversed burden of proof according to Section 29(3) of the Labour Law implementing requirements of Directive 97/80.[24]

However, on 8 December 2010 the Supreme Court delivered decision in another case regarding the same subject matter, namely, on the prohibition to dismiss pregnant worker during probation period. Such decision took into account the EU law.[25]

The facts of the case were following. Claimant was recruited by SIA EuroPark Latvia on 25 November 2008 with probation period of 3 months. This is the maximum probation period according to Section 46(2) of the Labour Law. On 11 February 2009 employer gave dismissal notice providing termination of employment relationship from 13 February 2009. On 12 February 2009 claimant submitted medical certificate attesting her pregnancy of 13/14 weeks nevertheless the employer did not recall dismissal notice and employment relationship ended on 13 February 2009. Claimant brought a claim before the court on 3 March 2009 on unfair dismissal by contenting that it is contrary to Section 109 of the Labour Law which precludes giving a notice of dismissal to pregnant worker except in strictly defined cases not connected with a pregnancy. She claimed restatement and compensation for moral damages on account of discrimination.

The respondent – employer claimed that dismissal was lawful because notice of dismissal during probation period may be given without statement of any grounds of dismissal and that employer was not informed and was not aware of the fact of pregnancy when giving notice of dismissal on 11 February 2009. Consequently employer considered the claim to be ungrounded.

The Supreme Court like both courts of lower instance upheld the claim of the claimant and decided that she must be reinstated and provided pay arrears for work stoppage. The Supreme Court in a particular decision provided answers to two important issues regarding interpretation of the Labour Law concerning special dismissal rights during probation period taken in conjunction with protection of pregnant workers in the light of the national and the EU law.

First, the Supreme Court ruled that provision on special protection of pregnant worker against dismissal (Section 109 of the Labour Law) is special provision in the context of generally applicable norms on dismissal procedure during probation period (Sections 46 and 47 of the Labour Law). Consequently, an employer is bound to follow dismissal requirements of Section 109 in case of dismissal of pregnant worker during probation period.

Second, the Supreme Court made it clear that in the context of Article 10 of Directive 92/85 a moment of provision of notification on pregnancy is irrelevant. The main requirement is that employer was aware of the fact of pregnancy during employment relationship even if such information was provided after giving notice of dismissal. Indeed such issue under the national law was unclear on account of the fact that the decisive factor or moment in dismissal procedure is giving of notice rather than actual termination of employment relationship. Both findings of the court reflect the requirements of Directives 92/85 and 2006/54. However, the Latvian courts have 'missed' to rule on fact of discrimination and right to compensation which, according to the EU gender equality law, is indispensable element of remedies in discrimination cases.[26]

1.3 Harassment on the grounds of sex

The Latvian courts have also decided on formally new concept in the Latvian law – the concept of harassment which was implemented on account of the EU directives of gender equality and non-discrimination.[27]

On 3 October 2010 the Riga Regional Court (a court of appeal) delivered a decision in a case on discrimination on the grounds of sex with regard to access to employment. The claimant was a customer of a private employment company offering recruitment services.[28] She participated in the application procedure for the recruitment of a sales manager. After the first round in the procedure for the selection

of candidates she received an e-mail stating that she was excluded from the second round in the selection procedure because 'for the second round the employer has selected only male candidates because the employer considers a male candidate to be more appropriate for the post in question'.

The decision of the Riga Regional Court overruled the previous decision of 28 April 2010 of the Riga City Zemgales District Court.[29] On 28 April 2010 the Riga City Zemgales District Court decided that there was no direct discrimination against the claimant because she had never been in an employment relationship with the respondent. The decision of the Riga Regional Court recognized that discrimination had occurred and awarded the claimant compensation for moral damage to the amount of EUR 426 (LVL 300).

The court of appeal upheld the interpretation of legal norms suggested by the claimant. Namely, that the principle of non-discrimination on the grounds of sex provided by the Labour Law is applicable to companies providing recruitment services as explicitly provided by the Cabinet Regulation No. 458.[30] The court of appeal also provided very good argumentation on factual circumstances demonstrating an attempt to apply a reversed burden of proof and even the principle of an objective investigation (as in an administrative process) by adding argumentation not provided by the claimant. The court stressed in this decision that the recruitment company had not submitted any evidence which would logically explain why only male candidates were included in the final round and why a male candidate would be more suitable for the post in question. The court also ruled on the amount of compensation for discrimination on the basis of criteria provided by the CJEU in the case of *Colson*.[31] Namely, the decision on the amount of compensation was based on the considerations of just satisfaction and a deterrent effect. Overall, this decision demonstrates the progress of national courts in applying the EU law in general and especially the EU gender equality law. The respondent did not contest the decision and it has thus become effective.

1.4 Concept of worker under Directive 92/85 and gender equality law

In May 2009 the Supreme Court of Latvia referred to the CJEU for preliminary ruling in case *Danosa v. LKB Līzings SIA*. This was the first gender equality case where Latvian court referred for preliminary ruling to the CJEU. The questions referred to the CJEU where following: (1) whether a member of the Board of Directors of a capital company must be regarded as a worker within the meaning of Directive 92/85 and (2) whether Article 10 of Directive 92/85 and the case law of the Court of Justice preclude Section 224(4) of the Commercial Law,[32] which provides that the members of the Board of Directors of a capital company may be dismissed without any restrictions, in particular, in the case of a woman, irrespective of the fact that she is pregnant.[33] The CJEU answered to the effect that: (1) a member of a capital company's Board of Directors who carries out activities which are integral to a company under the direction or supervision of another body of a company and receives remuneration for that purpose is to be considered as having the status of a worker under Directive 92/85, and (2) Directive 92/85 precludes such a national provision (Section 224(4) of the Commercial Law) which allows unrestricted dismissal of a 'pregnant worker' on account of her pregnancy, while Directives 76/207 and 2002/73 preclude the said national provision even if a worker does not enjoy the status of a 'pregnant worker' under Directive 92/85, because it does not restrict the dismissal of a pregnant worker on account of pregnancy and thus offers no protection against direct discrimination.[34]

The Grand Chamber of the Supreme Court of Latvia delivered its final decision on 19 January 2011.[35] It rejected Danosa's claim entirely on the following grounds. Firstly, although according to the factual circumstances of the case the claimant had to be regarded as a worker, she did not have the status of a 'pregnant worker', because she had not informed her employer of her pregnancy in accordance with the national law (Section 37(7) of the Labour Law). Consequently, protection under Directive 92/85 was not applicable to the present case. Secondly, the claimant had never claimed sex discrimination, namely that she was removed from the post of Director of LKB Līzings on account of her pregnancy, thus the protection provided under Directives 76/207 and 2002/73 was not applicable to the present case.

It is true that the claimant had not informed her employer about her pregnancy and she had never claimed that she had been dismissed on the grounds of her pregnancy, consequently the decision of the Grand Chamber of the Supreme Court has correctly applied the EU law and the interpretation provided by the CJEU in this particular case.

However, the fact generally remains that Section 224(4) of the Commercial Law runs contrary not only to the gender equality directives but also to the non-discrimination directives, because it does not require giving written notice of dismissal with the grounds stated to a pregnant worker and does not offer protection against discriminatory dismissal. No legislative initiatives have been taken to amend the respective national provision so far, because the Ministry of Welfare considers that this is just a matter of correct interpretation and application of the national law, namely, that in situations like the present case Section 109 of the Labour Law would override the provisions of Section 224(4) of the Commercial Law. In this context it is worthy to mention that unclear and too complex legal regulation usually does not lead to its correct application in practice, thus the author of this article considers that it is necessary to amend the Commercial Law with respective provisions protecting board member against discriminatory dismissal.

In overall, decision in *Danosa* case is important from the perspective of general application of the EU law by the Latvian courts, because national court once again demonstrated ability to identify unclear issues related to the EU law and distinction between formally same concepts with possible substantive differences under the national and the EU law such as concept of 'worker'.

1.5 Comparable situations and 'male' and 'female' jobs

Notwithstanding progress in application of the EU gender equality law by the national courts there are still cases with serious shortcomings.

On 8 December 2010 the Supreme Court delivered a decision in a case on discrimination on the grounds of maternity.[36] The claimant had been employed as a bookkeeper by SIA JD Mārketings since 2 June 2003. From 2 March 2009 until 14 July 2009 she was on maternity leave. After her return to work on 14 October 2009 SIA JD Mārketings gave the claimant notice of dismissal as from 14 November 2009 on the ground that the undertaking is to be restructured and there consequently there will be decrease in employees. On 16 December 2009 SIA JD Mārketings recognized that the notice of dismissal was void and it reinstated the claimant retroactively from 14 November 2009. Most probably the claimant was reinstated due to the fact that she had brought an action before a court on 13 November 2009 and on account of the provision explicitly prohibiting the dismissal of an employee during the maternity period which lasts for at least one year after giving birth or for the whole period of breastfeeding. The claimant claimed before

the court that she had been discriminated on the grounds of sex. This discrimination started on 10 August 2009 when the employer informed her that she would only be employed on a part-time basis ($^1/_4$ of the normal weekly working time or 10 hours a week) and that her salary would be reduced by 93 % (from EUR 939 (LVL 660) to EUR 64 (LVL 45)). However, in practice the workload remained the same. She claimed arrears of pay – the difference between the pay for the respective period – and compensation for moral damage on account of discrimination in the amount of EUR 7114 (LVL 5000).

Courts at all instances recognized the illegality of changing the employee's employment conditions, including pay, and decided in favour of the claimant and ordered that her arrears in pay – the difference between EUR 939 and EUR 64 (LVL 660 and LVL 45) for the respective period – must be paid. The courts found that there had been no amendments to the employment agreement and thus the employment agreement had not been changed and the claimant was still entitled to a monthly salary of EUR 939 (LVL 660). However, all courts rejected the claim of discrimination.

The courts rejected the discrimination claim on the grounds of the following argumentation. Firstly, it rejected the claim alleging breach of the principle of non-discrimination on the grounds of sex based on the fact that only the claimant was subject to a pay cut of 93% while the other workers were reduced by, on average, 13%. The courts found that the claimant's situation was incomparable with the other employees on account of the fact that other workers were employed in posts which corresponded more to males, in particular, the posts of loader, fitter, driver, storekeeper. The Supreme Court fully agreed with this finding of the lower courts!

Secondly, the claimant based the amount of compensation for moral damage on the fact that she had suffered from almost total loss of the possibility to breastfeed her child. However, the courts found that she had not proven the causal link between the situation of discrimination after her return from maternity leave and the loss of the possibility to breastfeed.

Finally, the Supreme Court upheld the decisions of the lower court stating that there had been no breach of the principle of discrimination irrespective of the fact that the employer, immediately after the maternity leave, had decreased the claimant's salary to a much greater extent than the salary of other employees and also irrespective of the fact that the employer had given her an illegal notice of dismissal during the maternity protection period.

This judgment demonstrates lack of knowledge of gender equality law and, in particular, indicates the gender stereotype that judges have, resulting in their inability to identify discrimination. Such reasoning also runs contrary to the right to a fair trial which precludes assessment of the fact of case in the light of gender stereotypes such as which professional activity is more appropriate to male and which to female workers. The Supreme Court is not well aware of the possibility to contest this decision on the basis of the state liability principle under the EU law.

2 Non-discrimination

There were two decisions which had high publicity and debates in mass media regarding discrimination on the grounds of ethnic origin and sexual orientation with regard to access to employment.

The case on discrimination by reason of ethnic origin originated in situation where employer refused employment of Roma person on the grounds of formal

reason, in particular, that she speaks Latvian with an accent.[37] The court however took into account the fact that person is of Roma origin which is highly prejudiced ethnic minority in Latvia, the fact that the claimant graduated Latvian school thus her knowledge and skills in use of official language is appropriate for the position of shop assistant and the fact that even in the presence of an accent in speaking Latvian it is not a genuine occupational requirement for the post in question. The court thus found grounds of refusal of employment of a claimant only as formal pretext to actual discrimination on the grounds of Roma origin of the candidate. The court also awarded the claimant compensation for moral damage. The decision also demonstrates correct application of reversed burden of proof, namely, the court found discrimination on the basis of lack of reasonable explanation by the employer of the grounds of refusal to employ the claimant.

Another case was on the refusal to employ on the grounds of sexual orientation.[38] The claimant was refused position of teacher of history of religion at secondary school. In time of application for a position of a teacher wide public was aware of the homosexual orientation of the claimant, because he was anathematized from the Lutheran church where he had served as a priest on the grounds that he does not correspond to the ethos of such religious organisation by the reason that he disclosed the fact of his homosexual orientation. At the time of proceedings the Labour Law did not provided explicitly for the discrimination ground – sexual orientation, however, the court applied the principle of indirect effect and interpreted an open list of discrimination traits 'and other circumstances'[39] as embracing sexual orientation as required by Directive 2000/78. Besides to that the court correctly established that there were no reasonable explanation for the refusal to employ the claimant because his professional education and experience was considerably higher than that of the person who were employed for the position in question and that director of the secondary school was well aware of the homosexual orientation of the claimant which led to the establishment of the fact of discrimination on the grounds of sexual orientation. The court as well decided on compensation for moral damage to the claimant. This decision like the previous one demonstrates correct application of the principle of reversed burden of proof as well as correct application of the EU law by the use of principle of indirect effect requiring the national court to interpret the national law provisions in conformity with the aim provided by directives.[40]

3 Working Time

3.1 The loss of the rights to allowance in lieu for unused paid annual leave

On 10 November 2010 the Supreme Court of Latvia overruled the decision of the Riga Regional Court on the right of dismissed employee to the allowance in lieu for unused paid annual leave for period lasting from 15 October 1999 till 2 April 2009. The Court ruled that such claim is ungrounded on account of lapse of time period entitling to claim any rights under the Labour Law which is two years (Section 31(1)). The Court held that longer time period would run contrary the idea of the right to paid annual leave as provided by the Labour Law and, inter alia, as follows from requirements of the ILO Convention No. 132 (1970) and Directive 2003/88. The Court found that it is not only employer's obligation to provide paid annual leave but also worker's obligation to use it. It based its finding on the disposition principle of private law providing that each person is free to choose on action

which may lead to the loss of the right to claim breach of rights. In the particular case, irrespective of the fact that the employer had not acted on the requests of the claimant regarding her wish to use annual leave, the claimant has not lodged any complaints before the State Labour Inspectorate or a court thus she has not properly used her rights.

In the opinion of the author of this report, formally the finding of the Supreme Court is correct, however correctness is doubtful from the perspective of the protection of the employees right available in practice. The author fully agrees with the opinion of the Head of Department of Legal and European Affairs of the Ministry of Welfare stating that in normal circumstances it is unimaginable that an employee does not wish to use the right to paid annual leave within the respective year.[41] Provision of the full employment rights in Latvia, especially, in private sector, is not very common, but employee's protection system, including national courts, is not satisfactory. In fact, any claim of employment rights may lead to negative treatment on part of an employer and result in (unlawful) dismissal. The court should have also taken into account the fact that there is widespread phenomena of partially undeclared work which means that only part of employee's salary is declared officially, which may lead to disinclination to use such right on account of loss of part of factual income for a month. Latvian courts must take into account such important aspects before providing formal interpretation of legal norms and assessment of the facts. Moreover by not taking into account factual situation in employment in Latvia the court has failed to observe the principle of effectiveness of the EU law which requires provision of the EU rights effectively. In such circumstances the national court should have taken into account the finding of the CJEU, as correctly pointed out by the official of the Ministry of Welfare that loss of the right to paid annual leave in circumstances where worker had no actual right to use it runs contrary to the aim of such right under the EU law.[42]

3.2 Amount of pay during paid annual leave

The issues of amount of pay during paid annual leave are discussed in a number of cases of the CJEU.[43] The CJEU held in such cases that amount of pay during paid annual leave and amount of compensation for unused paid annual leave in case of termination of employment relationship must constitute normal salary of an employee, plus normal pay in such case must comprise all elements of pay which relate to personal and professional status of an employee.

In the light of such findings of the CJEU and decision of the Supreme Court in case on equal pay referred above,[44] Section 75(3) of the Labour Law providing that an employee's average pay must be calculated on the basis of statutory pay if he/she has not worked the previous 12 months is inapplicable not only from the perspective of equal pay between men and women but also from the perspective of right to paid annual leave as provided by Article 7 of Directive 2003/88.

4 Information and consultation

Legal standing of the trade unions

Number of the EU labour law directives provide for collective rights, including Directive 98/59, 2001/23, and 2002/14 stipulating for general obligation to inform and consult workers' representatives and, in particular, in case of collective redundancies and transfer of undertaking. All of directives require provision of effective

enforcement mechanisms under the principle of effectiveness of remedies[45] for protection of the breach of the rights deriving from the EU law.

Latvian court judgements however seem to apply doctrine on legal standing which does not comply with the requirement of effectiveness. In particular, in two cases on breach of obligation to inform and consult with workers' representatives (one concerning transfer of undertaking and other concerning collective redundancies), national court refused legal standing of the trade unions as a claimant. In one case the claimant – trade union claimed to declare fact of a transfer of undertaking and automatic takeover of all employment agreements by the transferee,[46] in another case the claimant – trade union claimed provision of right to information and consultation in case of reorganisation leading to collective redundancies.[47] The Supreme Court in both cases did not identify right to information and consultation as right constituting object of a claim within the meaning of Section 1 of the Civil Procedure Law.[48] It did not mention such rights at all instead the court went to elaborate on the rights to bring claims by each individual employees and the right of trade union to act as representative of employees. The court ignored provisions of the Labour Dispute Law[49] stipulating concept of collective disputes and consequent right to legal standing of workers' representatives in status of a claimant. The court did not take into account that in substance the claims were on breach of collective rights and breach of individual rights is just a result of breach of the former rights. The fact is that in the light of this, the problem is similar from the perspective of individual claims. Most likely individual claim would be dismissed on the grounds that individual rights are not breached because right to consultation and information is collective right[50] and that there is no particular remedy to claim for, because remedies are non-existent.

It follows that the Latvian court practice does not correspond neither to the national law provisions nor the EU law on collective right to information and consultation with regard to concept of collective claim and right to legal standing as a claimant to collective bodies of workers' representatives.

5 Transfer of undertakings

Identification of a fact of transfer

On 29 April 2010 court of first instance (Riga District Court) delivered decision in case where claimant insisted on unlawful termination of employment contract by reason of transfer of undertaking.[51] The claimant was an employee of Riga Airport performing tasks of client manager of business class passengers (business lounge). On 30 March 2009 she was proposed to sign agreement on voluntary termination of employment relationship with Riga Airport. She signed this agreement because the former employer persuaded her that she will be recruited by Air Baltic Corporation – the enterprise who overtakes services for business class passengers (business lounge) in Riga Airport. The facts testifying on transfer of an undertaking are following: at the beginning of year 2009 Airport Riga announced public tender for companies to provide services for business class passengers (business lounge). The winner was Air Baltic Corporation. This company started to provide business lounge services from 1 May 2009 when agreement with Riga Airport on the transfer of assets and rent of the premises (previously also used for the business lounge) was concluded.[52]

Although facts of the case demonstrate obvious case of a transfer of an undertaking, national court of first instance did not went to analyse the real cause of the

agreement on the termination of employment contract by Riga Airport but decided that the claim on unfair termination of employment contract must be rejected on the grounds that such agreement was concluded voluntarily without serious falsehood and that the fact on conclusion of agreement on business lounge services between Riga Airport and Air Baltic Corporation does not makes agreement on termination of employment contract between claimant and Riga Airport void.

Such decision clearly demonstrates lack of understanding of the national court on the concept of transfer of undertakings. The claimant has submitted appeal to this judgement.

6 Young people at work

The concept of 'a child' and working time during school holidays

On 23 January 2008 the Supreme Court ruled on the concept of 'a child' and working time during school holidays. Son of the claimant was employed in summer during school holidays by the undertaking 7 hours a day and 35 hours a week.[53] The son of the claimant was 15 years old during employment. The claimant complained about overtime employment of her son. In the context of Directive 94/33 the Labour Law provides for special requirements on working time for employment of children. The children (persons below age 18) may be employed no more than five days a week.[54] Children starting from age 13 may be employed for no more than 2 hours a day and 10 hours a week, if work is performed during study time, and no more than 4 hours a day and 20 hours a week during school holidays.[55]

The Court found that son of the claimant was already 15 years old at the time of employment, however he was subject to full-time compulsory schooling thus he was not 'an adolescent' but 'a child'. According to this finding and provision of the Labour Law (Section 132(2)(2)) which allows extending working time of a child during school holidays up to 4 hours a day and 20 hours a week the Court ruled that employer has breached norms on employment of children. Thus the court in this judgement has correctly applied the provisions of Directive 94/33.

Conclusions

1. National court practice in general demonstrates progress towards correct application of the EU labour law, at the same time some of judgements demonstrate shortcomings in identification of the main EU labour law concepts, such as discrimination on the grounds of maternity and transfer of undertakings.
2. In recent decisions national courts demonstrated understanding of existence of the same formal concepts under the national and the EU law which in their substance may be different however. It is highlighted in cases on concept of 'pay' within the meaning of equal pay and concept of 'worker' under the EU law.
3. The same finding on progress in correct application of the EU law concepts and principles regards application of the special remedies required under the EU labour law. For example, even though some court decisions demonstrate correct application of reversed burden of proof in discrimination cases, nevertheless there are still judgements which demonstrate failure in application of this special procedural rule. Such situation arises also partially on account of the lack of more detailed national legal regulation, especially under national procedural rules. Such problem also applies to the enforcement of the right to compensation in discrimination cases.

4. National courts become more and more aware of mechanisms of application of the EU law, such as, for example, indirect effect and supremacy of the EU law. It is demonstrated by number of national judgement where national legal norms were interpreted in the light of objectives of directives in question according to principle of indirect effect and where in situation of collision of the national and EU law norm the latter was given priority according to principle of supremacy of the EU law.
5. The weak point of national courts is however observance of the principle of effectiveness of remedies for the breach of the EU law. National courts sometimes fail taking into account the overall factual situation in the labour market, like, for example, possibility to use right to paid annual leave. At the same time most serious shortcoming in the view of present author is refusal to grant legal standing of trade unions as claimants in practice arising from the failure to identify right to claim breach of collective rights to information and consultation as object of a claim.

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