

SOME REMARKS ON LITHUANIAN EXPERIENCE

After joining European Union in 1 May 2004, Lithuanian labour law had to be adapted to the requirements of EU legislation, including legal provisions concerning posting of workers.

Despite already 15 years of legal regulation and practise in the sphere of posting of workers, this issue is not popular among legal scholars, the case law is also small and fragmented.

It must be admitted that Lithuania is “sending (posting) country” with low numbers of other EU workers coming to Lithuania and quite significant number of workers posted from Lithuania to other EU Member States.

E.g., statistics up to 2019 shows that:

- only 0.1 percent of LT workforce posted to Lithuania (mainly from Poland)
- 1,9 percent of LT workforce posted to another EU countries (mainly Germany, Sweden, Netherlands. Also, Norway)

For the first period, the Directive 96/71/EC was transposed into national law using two legal instruments. The provisions of Lithuanian Labour Code stating the basic principle that additional guarantees to employees who are posted to the territory of the Republic of Lithuania as well as to employees posted to other countries must be set in special law. Thus, Lithuanian Labour Code provided only reference provision to the special law – Law on Guarantees for Posted Workers of the Republic of Lithuania. The main feature of the said regulation was that the law regulated both the working conditions of employees of foreign employers posted to the territory of Lithuania and employees posted from Lithuania to the territory of a foreign state. It was questioned whether such transposition of the provisions of the Directive, which is broader than its scope, conforms to the national interests or to the requirements of EU law.

All above mentioned legal instruments were replaced with new legal instrument – new Lithuanian Labour Code of 2016, replacing the former Labour Code as well the Law on Guarantees for Posted Workers.

The provisions of Directive 96/71/EC are implemented at the nation level by special Articles 108 and 109 of the Labour Code, which apply to posted workers from foreign countries. National regulation provided in Articles 108 and 109 of the Labour Code is also applicable to undertakings established in a non-member State posting workers in Lithuanian’s territory, but they do not provide any more favourable conditions comparing to EU posting cases.

The provisions of Articles 108 and 109 of the Labour Code are not applicable to domestic undertakings posting employees abroad. Special regulation for Lithuanian undertakings posting employees abroad is provided in Article 107 of the Labour Code and they are different from those of Articles 108 and 109. Thus, the legislator provided quite clear separation between two cases.

The provisions of article 3(1)(a)(b)(d)(e)(f)(g) of Directive 96/71 are clearly provided in the Article 108 (2) of the Labour Code. An employee shall be subject to the provisions of the Labour Code and other regulatory legal acts of the Republic of Lithuania regulating:

- 1) maximum working time and minimum rest periods (article 3(1)(a) of Directive 96/71);
- 2) duration of the minimum paid annual leave (article 3(1)(b) of Directive 96/71);
- 3) remuneration, including extra pay for overtime, night work, and work on days off and holidays;
- 4) the terms of employment for temporary workers (article 3(1)(d) of Directive 96/71);
- 5) safety and health at work (article 3(1)(e) of Directive 96/71);
- 6) safety at work for persons under the age of 18 and employees who are pregnant, who recently gave birth, or who are breast feeding (article 3(1)(f) of Directive 96/71);
- 7) prohibition of discrimination at work (article 3(1)(g) of Directive 96/71);
- 8) conditions of employees' accommodation when it is provided by the employer to employees working outside their permanent workplace;
- 9) reimbursement of additional expenses (transport, travel and other expenses) incurred by employees travelling to and from their main place of performance of job functions in the Republic of Lithuania, as well as additional expenses (transport, travel, accommodation and other expenses) related to business trips in the Republic of Lithuania and abroad;
- 10) the provisions of duration of the posting; the currency in which remuneration will be paid; payments in cash and in kind that are allocated for work in another country; the conditions for returning to the country of the permanent workplace.

It should be noted that article 3(1)(g) of Directive 96/71 mentions “equality of treatment between men and women and other provisions on non-discrimination” and Lithuanian provision uses less explicit term “prohibition of discrimination at work”. Nevertheless, according to Articles 2 and 26 of the Labour Code prohibition of discrimination at work includes requirement for equal treatment between men and women.

Provision of information. According Article 109 (3) of Labour Code, the State Labour Inspectorate must ensure that information on the provisions of regulatory legal acts of the Republic of Lithuania, including national, territorial and sectoral (industry, services, professional) collective agreements or separate provisions thereof, the application of which has been extended, on the terms and conditions applicable to a posted worker, is available to employers under the jurisdiction of a foreign country and their employees free of charge, updated in a timely, in a clear, transparent and comprehensive manner, remotely and electronically, in internet access format and standards, while ensuring accessibility to people with disabilities.

In practise, this provision is implemented, using national web site of the State Labour Inspectorate.

It can be noted that the most substantial information is provided in national (Lithuanian) and English languages, and at smaller extend on Russian and Ukrainian languages.

The use of languages when providing information of state institutions has a special legal ground: the Resolution of the Government of the Republic of Lithuania “Regarding the approval of the description of the general requirements for the websites of State and municipal institutions.

The Resolution states that all information must be available in Lithuanian on the institution’s website. Key information related to the institution’s activities, including (but not limited to) information on the public, administrative services and explanation on how to obtain them, must also be available in English. If necessary, this information must be available in other foreign language.

This regulation reveals several aspects:

- firstly, there is now obligation to provide the same extend of information in other languages comparing with Lithuanian. The institution must evaluate and to choose what “key” information would be provided in English and other languages.
- secondly, legal regulation gives a priority to English, other languages must be chosen after evaluation by each institution;

According to the official survey data¹, the most popular second language used by Lithuanians is Russian (86 % of population), in second place – English (45 %), then – Polish (15 %) and German (12 %). There is now legal explanation, why English has been chosen as second language in the Resolution, but it can be predicted, that this regulation is connected to the most spread official language of European Union, which is English among Lithuanian population.

¹ Data of the Lithuanian Department of Statistics of 2016.