DARBO SANTYKIŲ
IR VALSTYBINIO
SOCIALINIO DRAUDIMO
TEISINIS–ADMINISTRACINIS
MODELIS

PAGRINDINIŲ DARBO KODEKSO PROJEKTO NUOSTATŲ VERTIMAS Į ANGLŲ KALBĄ

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1. The Necessity to make amendments to Labour Code and the expected results

Economic development requires flexible employment relationships which would foster creation of new jobs, contribute to the reduction of unemployment and youth employment, reduce incentives to work illegally or without officially registering the actual time worked. When assessing the flexibility of employment relationships, account is taken of flexibility of working time, complexity of employment and termination, and redundancy costs. In Lithuania the status of working relationships is seen as unfavourable by foreign investors and national employers, as well as by the European Union,[1] therefore a comprehensive revision of the existing legal framework is necessary.

At present, the Labour Code inflexibility regulates termination and employment of employees, does not provide for specific features of certain employment relationships, and strictly regulates working time. Certain institutes such as work remuneration, guarantees and compensations, material and disciplinary liability have remained unchanged since Soviet times. Furthermore, in some cases the Labour Code unnecessarily provides for excessive administrative burden on employers which causes additional costs and does not encourage creation of new jobs. On the other hand, the increase of flexibility in employment relationships, greater freedom for employers to employ and dismiss employees, and opportunities to conclude mutual agreements must be outweighed by ensuring the protection of employees. Labour law must specifically regulate new issues which are relevant today, such as promotion of life-long learning, the employee's life-work balance, the protection of personal data and non-discrimination, use of information technologies at work, etc.

Today, since the Labour Code regulates all the issues, the parties (trade unions and employers and their organizations) are reluctant to negotiate, thus collective agreements apply to less than 10 per cent of employees. Revision of Labour Code is necessary in order to encourage collective bargaining and conclusion of collective agreements by liberalizing collective labour disputes.

In order to rectify regulatory gaps and defective case law it is necessary to develop a new and qualitatively different legal act which

[1] Council recommendation on Lithuania's 2014 national reform programme (COM(2014) 416 final), states: "Review the appropriateness of labour legislation, in particular with regard to the framework for labour contracts and for working-time arrangements, in consultation with social partners." Access via Internet: (http://ec.europa.eu/europe2020/pdf/csr2014/csr2014_lithuania_lt.pdf). The recommendations of previous years are worded similarly.

would regulate employment relationships with integrative approach. Such act would bring legal certainty and transparency into the labour market, legal regulation would be easier predictable and balanced, and would encourage creation of new jobs and economic development.

2. The structure of Labour Code

Codified law is normally characterized by the separation of general and special parts. General provisions define the scope of application of special provisions, general principles and other rules of general use. The same view was expressed in the Labour Code of 2002, where general provisions were followed by special norms which applied to collective and individual employment relationships.

In substance, the same conception is used in the draft Labour Code – general provisions in Part I are followed by three parts containing special provisions. Traditionally in the special part the provisions regulating individual employment relationships are laid out separately from the provisions regulating collective employment relationships, though in comparison to the Labour Code of 2002 the order of these provisions in the draft Labour Code is changed – the provisions regulating individual employment relationships are followed by the provisions regulating collective employment relationships, to which the parties are employers and their organizations on the one hand and trade unions (their associations) and works councils on the other hand. A novelty of the Labour Code is the new Part IV "Labour Disputes" aimed at the regulation of both individual and collective labour disputes over rights (non-compliance or defective compliance with labour law norms) and over interests (upon conclusion of collective agreements between employers, their organizations and trade unions). Each of these parts contains legal norms of separate labour institutes (employment contract, working time, wage, collective agreements, etc.) regulating respective social relationships.

The structural scheme of the Labour Code is included in the annex No. 4.

Part I of Labour Code "General provisions"

The first part of the Labour Code is traditionally called "General Provisions", since it contains law norms outlining material, territorial and temporal scope of application of the whole code and defines labour law norms, principles of regulation of employment relationships and other provisions of horizontal application (protection of labour rights, time limits, etc.).

First, the scope of application of the Labour Code is defined. The Labour Code regulates individual employment relationships that arise on the basis of employment contract between the employee and the employer, as well as other related relationships that arise before the conclusion or after the termination of employment contract, collective labour relations between employers or their organizations and employees' representatives, employment relationships that arise in the course of dispute resolution

between the parties to the dispute, relationships of the compliance with and the supervision of the laws, etc.). Additionally in cases provided for by laws some of the provisions of the Labour Code may also apply to other relations (public service relations, self-employment).

The listing of specific principles regulating employment relationships has been abandoned. According to the new Labour Code: "Employment relationships shall be regulated in accordance with the principles of legal certainty, protection of legitimate expectations as well as the principle of comprehensive protection of employment rights. The other principles of labour law shall be established by the provisions of separate labour law institutes." The cases and conditions of the application of the law norms and principles regulating civil and administrative relationships have been established: law norms regulating civil relationships as well as legal principles may be applied to employment relationships only in cases of regulation gap and where this does not contradict the essence of the legal regulation of employment relationships, and law norms as well as principles regulating administrative relations may be applied to employment relationships with public element and only in cases of regulation gap.

A new concept of "labour law norms" is introduced. It comprises the rules that mandatorily regulate employment relationships in a normative way. Further, concerning the sources of labour law, the Labour Code sets forth that labour law norms are established in this Code, other laws regulating employment relationships, legal acts of the European Union, international treaties, collective agreements, agreements between the employer and employees' representatives as well as in the other internal regulatory acts, Government resolutions and regulatory acts of the other state institutions. Agreements between the employer and employees' representatives (agreements between the employer and works council) next to the existing collective agreements between the employer (employers' organizations) and trade unions are introduced as novelty following the separation of competences of works council and trade union applied in collective relations. The principle of hierarchy of legal acts is maintained, thus the provisions of agreements between the employer and employees' representatives, as well as the provisions of internal regulatory acts, Government resolutions and regulatory acts of the other state institutions may not establish working conditions which are less favourable to the employee than those provided by this Code and other laws, safe the exceptions permitted by these acts. As a novelty, a principle according to which collective agreements concluded by trade unions may establish working conditions which are less favourable to the employee is introduced.

Concerning the territorial scope of application of the Labour Code, a strict principle of territoriality is established – labour law norms of Lithuania shall apply to the employment relationships that occur or are modified, terminated or being exercised in the territory of the Republic of Lithuania except for the rules established in this Code, international

treaties or the legal acts of the European Union. It should be noted that agreements derogating from this principle are permitted in respect of diplomatic institutions and their employees. Labour Code sets forth conflict of law rules regarding employment relations with foreign element (Regulation 593/2008), posted employees (as required by Directive 96/71/EC), relations on means of transport. The application of *lex flagii* principle is retained on board ships flying the national flag of the Republic of Lithuania as well as on board aircraft. However, in cases of road transport the abovementioned principle is replaced with the principle of the application of the law of the state where the employer has its registered office. For the first time in Lithuania the rules governing collective relationships are introduced: the conclusion, application and validity of a collective agreement is governed by the law of the state in which the head office of the party to the agreement – the employer, employers' organization – is registered, unless the parties to the agreement agree otherwise, whereas the lawfulness of collective action aimed at resolving a collective dispute is determined by the law of the state in which the action was exercised (by active or passive actions).

The rules concerning time limits remain essentially unchanged. In the Labour Code the view is taken that terms of up to one week should be defined in working days and longer terms – in calendar days or calendar weeks or in months.

The general period of limitation remains the same – three years. There is no limitation of actions regarding employee's non-property damage claims for defence of his honour and dignity, as well as non-property claims for reparation of damage related with impairment of health or loss of life. The provisions of the Civil Code and the Code of Civil Procedure continue to apply to the calculation and application of limitation of actions. The concept of seniority is abolished in the new Labour Code – in order to avoid possible indirect discrimination based on age, employee rights and guarantees are no longer linked to seniority.

In the chapter "Protection of employment rights" it is defined that employment rights are protected by the dispute resolution institutions, under administrative procedure, through employees' or employers' representatives, in addition, the possibility to apply liability for the infringement of labour law norms is envisaged. Protection of employment rights by employees themselves is no longer regulated in this chapter.

A novelty of the Labour Code is the concept of the average number of the employees of the employer and the concept of the average number of the employees in the employment place. The application of these concepts is linked to a different and differentiated level of obligations of the employer. For example, employers with the average number of employees exceeding fifty have the obligation to publish on a website the information that is updated at least once a year concerning applied administrative penalties in effect and penalties imposed for the infringement of laws regulating employment relationships, anonymised employee data, except data of employees occupying managerial positions, data on the average wage according to job positions and sex, implementation of equal

opportunities policies and measures, employees' personal data retention policies and measures. Such employers have an obligation to invest more in training and there is an obligation to have a system of remuneration for work.

The employers employing less than ten employees may be exempt from the application of certain provisions of the Labour Code. Such employers are not obliged to provide information on the state of employment relationships, they may set a trial period of a double length, halve the period of notice, disregard the rules on priority rights when dismissing an employee, to make their own annual leave schedule in accordance with the requirements of the Code, to make an agreement with an employee for a 30 per cent lower per diem rate, disregard the rules on the pay for educational leave. The employers employing less than five employees on average have the right not to grant the employee annual leave when employment relationship with the employee has lasted less than one year, instead the employee must be paid compensation for unused annual leave, such employers are also entitled not to apply the rules on making the annual leave schedule when granting paid leave, to request the court not to reinstate the employee in his or her previous position in case of unlawful dismissal and to award compensation instead. The rules on determination of the average number of the employees employed by the employer or at the employment place should be established by the Minister of Social Security and Labour.

Part II of Labour Code "Individual Employment Relationships"

The second part of the Labour Code is called "Individual Employment Relationships" and is designated to regulate the aspects of employment contracts between the employee and the employer, i.e. conclusion of the employment contract, performance of the employment contract and termination of the employment contract, working and rest time, remuneration, liability for the breach of work duties. The Code does not regulate safety and health of employees at work since this regulation is set forth in the special Law on Safety and Health at Work applied to a wider circle of persons (including public service and similar legal relationships).

The first innovation in the Code is related to the repeal of the institute of employment. The norms which have regulated the general system of employment, the concept of unemployed persons and the definition of illegal work have been transferred to the new version of the Employment Act of the expanded coverage.

Chapter I. The parties to the contract of employment and their general obligations

The definition of active legal capacity is repealed in the Code. New concepts of employee and employer are introduced. The concept of the place of employment is defined as structural organizational units (branches, representative offices and other structural divisions) in which employer operates and where employee performs his or her work functions.

In the definition of parties to the contract of employment (an employee and an employer) the concept of active and passive legal capacity is repealed as superfluous. An employee is a natural person who is committed to perform a work function for remuneration under a contract of employment. An employer is a person in whose favour and under whose subordination a natural person employed under the contract of employment is committed to perform a work function. An important innovation is the introduction of the place of employment as a division of a legal or natural person. It is set forth that an employer may have one or more places of employment (i.e. structural organizational units such as branches, representative offices or factories, shops etc.) in which employees work. Such definition of the place of employment is necessary under the legal acts of the European Union on the obligations of informing and consulting employees, also for the detailing of the obligations of employers in cases where they operate in different divisions in different places. There is one exception – the division (branch, representative office) of a legal person registered in the territory of the Republic of Lithuania and falling within the jurisdiction of a foreign state is considered an employer, whereas in the case of the subject of Lithuania the employee is the legal person.

The concept of staff, as a separate subject of labour law, is repealed since the latter does not have its own rights and obligations. Employees exercise their rights and obligations themselves or through their representatives – works council or trade union acting within their respective competence.

It is important to note the innovation of the Labour Code – the principles of labour law regulating individual employment relationships are specified in the Code. New and important principles are discussed in detail in the Code in order to achieve the balance of employees' and employers' rights and interests.

The principle of fairness and cooperation means that, in exercise of their rights and performance of their duties, employers and employees must act in good faith, respect the rules of communal life, not abuse the right and each party must exercise their rights in such a way that the other party could defend their interest at the minimum time and other expenses.

The principle of correct information and protection of confidential information means that both parties of employment contract shall inform each other about circumstances which could influence the conclusion, performance and termination of the employment contract. Such information should be given to the employee in a correct way, free of charge and in reasonable time. In case the Code sets the rule requiring to provide information in writing, it is considered to be fulfilled when data is transferred by means of information technologies that are commonly used (e-mail, mobile equipment, etc.), provided that it is possible to identify the content of information, the sender, the fact and time of its submission. There should also be reasonable means to save that information. It is the duty of the employer to prove these circumstances.

The principle of anti-discrimination is developed in the Code. This principle has already been expressed in the laws of the Republic of Lithuania transposing respective directives of the European Union. The norms of the Labour Code are designated for the effective implementation of this principle, e.g. employers with more than 50 employees must publish their policies on the implementation of equal opportunities, they must also have the system of remuneration which should be clear and non-discriminatory and so on.

Fragmentally discussed in the other laws of Lithuania, the principles of the protection of the employee's personal data and the privacy of the employee's personal life is specified in the Code. For the first time the Code sets forth that the exercise of the right of ownership to the information and communication technologies used in the workplace must not infringe the inviolability of employee's communication. Video surveillance and audio recording in the workplace may be exercised in cases where due to the character of work it is necessary to ensure the security of persons, property or the public safety, as well as in other cases when other means are insufficient, and (or) inadequate for the achievement of the abovementioned objectives, except in the event when it is directly intended to control the quality and scope of work. In cases of video surveillance or audio recording in the workplace the employees must be informed by a visual sign in a visible place.

The principle of respect of the employee's family commitments (work-life balance) takes a new meaning in the legal norms that oblige the employer to take measures to help the employee fulfil his or her family commitments, except for the cases when it is impossible due to specific features of the work function or the employer's activities or due to excessive expenses on the employer's part. The employer must consider and give a reasonable response to the requests of the employees. Employee's actions at work must be considered in order to fully and effectively implement the principle of work-life balance.

Greater attention is paid to the improvement of employee's qualifications, professionalism and the ability to adjust to the changing business, professional or working conditions. For this purpose Labour Code sets forth that in cases and in the order established by law or the agreements between the parties, the employer must provide conditions for employee's training, in-service training, and the improvement of professional skills.

The Labour Code sets prerequisites for the protection of property and non-property interests of the employee and the employer. For example, it is set forth that an employee must use the work equipment, property and resources given to him or her by the employer in accordance to their intended destination and economically. The employer is entitled to set the order of the use of his own work equipment, property and resources given to the employee without violating the rights of the employee set forth in the laws. As one of the employer's protection measures, the Code provides for the possibility to conclude non-competition agreements within the defined limits of permissibility, as well as agreements on the protection of confidential information. And the employee is for the first time protected by law in cases of so called

whistleblowing (the employee may not be persecuted for reporting on the potential infringement of law norms by the employer) and mobbing (persecution, harassment, psychological abuse and so on), whereas the innovations of the employee aimed at the improvement of the activities of the employer and effective use of the work equipment, property and resources must be encouraged and protected.

Chapter II. Concept of Employment Contract and Conditions of Employment Contract

The concept of employment contract has been slightly modified in the Labour Code. Employment contract is an agreement between an employee and an employer whereby the employee undertakes to perform a work function for the benefit of and in subordination to the employer, and the employer undertakes to pay remuneration. The condition of subordination is specified (the performance of work function where the employer is entitled to manage and control both the entire work process as well as a part thereof, and the employee must obey the employer's orders or the work regulations established at the place of employment). In addition, the Code sets forth that commercial, industrial or financial risk arising during the performance of work function is in any case borne by the employer. The purpose of these provisions is to provide for additional opportunities to dissociate the concepts of employment relationships and self-employment or false self-employment.

Conditions of employment contract are traditionally divided into the essential and the additional conditions. The latter must not be agreed upon in the employment contract, however, they become binding once the parties agree on them. At the same time the parties are prohibited from concluding agreements of civil nature for the purpose of exercise of rights and fulfilment of obligations set forth in the Code.

The essential conditions are work function, remuneration for work and place of employment. In comparison to the previous regulation, the condition of remuneration for work is determined as essential condition. This provision is important since, according to the law, the parties must set basic (fixed) monthly salary or hourly wage which may not be less than the minimum monthly salary and the minimum hourly wage. In case the base wage is not defined, the remuneration for work indicated in the employment contract is considered as the base wage. In the event of a dispute regarding the amount of the agreed wages, the parties are considered to have agreed on wages paid to the other employee performing the same or similar work function.

Additional conditions of employment contract that may be agreed by the parties to the employment contract are specified in the Labour Code.

An agreement for additional work may be concluded for work activities performed during the time free from the performance of the main work function or at the same time as the main work, as well as for project work.

An agreement for trial period remains more or less unchanged, although the regulation thereof is simplified. It should be recalled that in enterprises with up to 5 employees it is

allowed to conclude agreements for trial period for up to 6 months.

As under the current regulation, an agreement on compensation for training expenses may be concluded for the terms of compensation of the expenses incurred by the employer in relation to the employee's in-service training where the employment contract that has been valid for more than a year is terminated through the fault of the employee or upon the notice of the employee without a valid reason. Nonetheless, only the expenses related to the provision of knowledge or skills exceeding the minimum requirements for work activities may be reimbursed. The parties may agree whether the costs related to the posting of employee are included in training expenses.

Non-competition agreements are governed by labour law, the Labour Code sets limits on permissibility of such agreements. During the period of non-competition of up to two years the employee must be paid compensation that amounts to no less than 40 per cent of the average wage payable at the time of the expiry of employment contract. The parties to the contract may not agree on penalty in advance.

An agreement on the protection of confidential information must include provisions determining the data constituting confidential information, duration of the agreement, employer's obligations aimed at helping the employee to maintain the confidentiality of such information. The parties may agree on the penalty.

Both upon the conclusion of the employment contract and in the course of performing the contract an agreement for part-time work can be made. This condition is no longer governed within the institute of the working time but as a flexible and dynamic provision of the content of the employment contract. In comparison with the current regulation, the new Labour Code introduces an additional flexibility when setting part-time work and switching from the established rate of working time into full-time work at the request of the employee. For example, the Code sets forth that an employee working on a part-time basis in entitled to request to exclude the condition of part-time work not more often than once every six months. The employer must consider such request and notify the employee of his or her reasoned decision within ten working days. In the course of performing the contract an employee who has been employed by the employer for not less than three years is entitled to request in writing to temporarily set part-time work. In accordance with the Code, certain employees' requests of this kind must be satisfied (when the request is based on the health status of the employee according to a conclusion of a health care institution, on employees disability or the need to nurse a family member, as well as on the request of a pregnant woman, a woman who has recently given birth, a breast-feeding woman, an employee raising a child under three years of age, as well as an employee who is alone raising a child under fourteen years of age or a disabled child under eighteen years of age, etc.)

It should be noted that the proposed regulation transposes the provisions of the legal acts of the European Union.

Chapter III. Conclusion of an employment contract

For the first time pre-contractual employment relationships are governed by the labour law of Lithuania. It is foreseen that before the conclusion of an employment contract (also in cases when an employment contract has not been concluded) the parties to the employment contract must observe the obligations of non-discrimination, fairness, the duty to provide the information necessary for the conclusion and performance of the employment contract and to preserve the confidential information. Non-observance of these obligations provides the other party with the right to apply to dispute resolution bodies and to claim compensation for damages.

An employment contract shall be deemed concluded when the parties have agreed on the essential conditions of the employment contract (work function, place of employment and remuneration) and the commencement of work. According to the draft Labour Code, the list of conditions necessary in order to conclude the employment contract and to determine the moment of the conclusion is extended. After adding of agreement on remuneration and the commencement of work to the list, the guarantees to employees are not reduced as these agreements may be implied or presumed. On the other hand, a clearer regulation of the conclusion of an employment contract allows to distinguish between the moment of the conclusion and the entry into force of an employment contract and to allocate differentially the risk and the responsibilities between the parties.

After establishing that the concluded employment contract enters into force on the commencement of work by the employee, the liability for the non-entry into force of the contract through the fault of one of the parties is regulated. In case the employment contract has been concluded but has not entered into force without any fault on the part of the employee, the employer must pay the employee compensation in the amount not less than the agreed remuneration of the employee for the agreed period of employment, however, not more than one monthly wage.

As in the current regulation, the Labour Code provides that an employment contract is concluded in writing and the model form of an employment contract is approved by the Government of the Republic of Lithuania. The European Union directive 91/533/EEC is transposed trough a special article, according to which, in case the most important information on the terms and conditions of employment of the employee specified in the law is not provided in the written employment contract, the employer must provide the employee with the information in writing not later than after one month from the commencement of work.

Chapter IV. Performance of an employment contract

All the employee's employment conditions are divided into the essential, the ones separately agreed in the contract, and all the other conditions under which the employee performs work.

As at present, the draft Labour Code provides that the essential conditions and the conditions separately agreed in the contract by the parties may be changed only with the written consent of the employee. As a novelty should be regarded the fact that the condition on work remuneration again becomes the essential condition which leads to the fact that it cannot be changed without the written consent of the employee.

A greater protection of the interests of an employee is ensured by means of an additional requirement according to which the employee's consent is required in order to change the type of work time regime (e.g. the usual work time regime into summary recording of working time), as well as to transfer an employee to work in another location.

In case the employer unilaterally changes the abovementioned conditions, an employee is entitled to apply to dispute resolution bodies and to require the employer to perform the contract and to compensate for the damage. If the changes to the employment contract are not contested within three months, it is regarded that the employee has agreed to work under the changed employment conditions.

Other conditions of the performance of an employment contract may be changed in case the legal acts governing those conditions change or in cases of economic, organizational or production necessity. An employee must be informed about the changes to these conditions in reasonable time. The employer must provide the employee with adequate conditions to prepare for the prospective changes.

The interests of an employee are additionally protected by the new entitlement of an employee to request the employer to change his or her employment conditions. The employer must respond to employee's written request in writing. A refusal to satisfy the employee's written request to change the essential or the contractually agreed additional conditions of the employment contract must be submitted in writing and reasoned. If the employer does not respond to the employee's request within five working days, the employee's request is considered rejected.

The Labour Code newly regulates payment for idle time (when an employee is not provided with work without any fault on the part of an employee). In case idle time continues up to one day, the employee shall retain his wage, if it continues up to three days – half of wage, if it continues for more than three days – 30 per cent of wage.

As at present, the suspension of an employment contract on the initiative of the employer is provided for in the cases of suspension from work, when an employee comes to work intoxicated with alcohol, narcotic or toxic substances. The institute of suspension of performance of employment contract also retains its features, whereby an employee is entitled to suspend the performance of the employment contract for a period of up to three months by giving the employer a written notice thereof three working days in advance, provided that the employer fails for more than two successive

months to fulfil his obligations to the employee, however, not of any kind, but only those obligations, as set out in the employment contract or the labour law norms governing working time and rest period, remuneration for work, and employees' safety at work.

A separate article is intended for a proper transposition of directive 2001/23/EC, whereby the obligations of the employer in the event of transfer of business or a part thereof and in the event of other changes in structure is regulated. It is provided that changes of shareholders of a legal person as the employer, changes of its subordination, founder or name, as well as merger, division by formation, division by acquisition, merger by acquisition or restructuring does not change the employment conditions of the employees of the employer and may not constitute a legitimate reason to terminate employment relationships. The transferee of business becomes the acquirer of the employer's rights and obligations of the transferor. In case these rights and obligations are governed by collective agreements, those agreements must be applied for one year after the transfer of business or a part thereof. As a novelty, a provision laid down in the said directive has been included in the Code stipulating that the transferor and the transferee shall be jointly and severally liable in respect of rights and obligations existing on the date of the transfer. In addition, a newly established employee's right to refuse to continue employment relationships with the acquirer of business is regulated.

In the Labour Code telework is perceived not as a type of employment contract which requires an agreement, but as a form of organising or performing work when an employee performs his or her work functions or a part thereof on a full-time or part-time basis following the procedure agreed with the employer away from the employer's premises on a regular basis, i.e. in an agreed place, acceptable for the parties to an employment contract, which is other than the employment place, also using information technology. An employee may pass to telework on his or her request or consent. In case of teleworking, the employer shall not record the employee's working time, however, the employee may not perform work in violation of the requirements for the maximum working time and the minimum rest period.

Chapter V. Expiry of an employment contract

The institute of the expiry of an employment contract has certain innovations as far as it concerns grounds for the expiry of an employment contract, protection of individual groups of employees, formalization of dismissal procedure and severance payments of the employees.

As at present, it is proposed to classify the grounds of dismissal from work according to the will and fault of the parties. An employment contract may be terminated by agreement between the parties or on the initiative of one of the parties. The employee's possibility to terminate an employment contract is differentiated according to the grounds on which the termination is based. The grounds that are considered important shall be only idle time without any fault on the part of an employee or non-payment of full work pay for over two successive months. In

this case an employee shall be paid severance pay in the amount of two week's wage.

Termination of employment contract on the initiative of the employer is divided into two groups: based on grounds not related to the fault on the part of an employee and for reasons related to the fault on the part of an employee.

An employer shall have the right to terminate an employment contract of indefinite duration or a fixed-term contract for the following reasons:

1) work activities performed by the employee become superfluous due to changes in work organization or other reasons related to the employer's activities;
2) an employer is not satisfied with the results of work of the employee;
3) an employee refuses to work under the changed essential or additional contractually agreed conditions of an employment contract or to change the type of working time regime or the location of employment;
4) an employee does not agree with the continuity of employment relationships in case of transfer of business or a part thereof.

Each of the abovementioned cases is further specified in detail. E.g. the changes in work organization or other reasons related to the employer's activities may be the ground for termination of an employment contract only if they are real and render the activities carried out by the particular employee or a group thereof redundant. The decision to terminate an employment contract can be made only in case where at the place of employment before the date of such decision there are no identical or similar, with regard to the work function, job vacancies to which an employee could be transferred with his or her consent. In case the superfluous work function is performed by several employees and only part of them are made redundant, the criteria for the selection of employees to be made redundant shall be approved by the employer, upon agreement with the employees' representatives. In this case selection is carried out by the commission formed by the employer which must include at least one employees' representative. The results of the employee's work may constitute a reason to terminate an employment contract provided that the deficiencies of the employee's work and the personal results that have not been achieved have been indicated to the employee in writing, the plan for improvement of the results comprising a period of at least two months has been jointly made up and the results of the implementation of the said plan have been unsatisfactory. An employee's refusal to work under the changed essential or additional contractually agreed conditions of an employment contract or to change the type of working time regime or the location of employment may constitute a reason to terminate an employment relationship when the proposal of the employer is based on the significant reasons of economic, organizational or production necessity.

In case there is no fault on the part of the employee, an employment contract is terminated by giving notice to the employee one month in advance, and if the employment relationship has continued for less than one

year – by giving notice two weeks in advance. The notice period is doubled with regard to the employees that would reach the retirement age in less than five years and tripled with regard to the employees that would reach the retirement age in less than two years. Dismissed employee must be paid severance pay in the amount of one average wage, and in case employment relationships has continued for less than one year – in the amount of half of wage.

An employer is entitled to terminate an employment contract without notice without paying a severance pay if an employee breaches the duties provided for in the labour law norms or employment contract through his or her active or passive actions. As at present, a reason to terminate an employment contract may be a gross breach of employee's work duties or the second breach of employee's duties committed during the last twelve months. As a novelty, only repeated breach that is of the same kind, but not a repeated breach of any kind, may be considered the reason to terminate an employment contract through the fault of the employee. What is also new, the termination may as well be justified on the grounds of such a breach of duties whereby an employer loses its confidence in the employee. The Labour Code provides that the employer must take a decision to terminate a contract due to a breach after assessing the gravity, consequences and the circumstances of the breach, the fault on the part of the employee, his or her behaviour and performance before the breach. In addition, it is required that dismissal from work should be the means that is proportionate to the breach or the entirety thereof.

The protection of pregnant women from the dismissal from work is no longer associated with the period of pregnancy and maternity leave but with the age of the baby (4 months). An employment contract with such an employee may be terminated only by the agreement between the parties, on her initiative, on her initiative during trial period or in the absence of the will of the parties, as well as on the expiry of the term of a fixed-term employment contract.

Employees raising one or more children under three years of age retain their protection, however, the protection is limited to the right of priority to be transferred to another work when the activities carried out by the employee become superfluous for the employer due to changes in work organization or other reasons related to the employer's activities, and the right to retain the job when the superfluous work function is performed by several employees and only part of them are made redundant due to changes in employer's activities or in work organization.

The cases of the bankruptcy of an employer and collective redundancies are regulated separately. In comparison with the current legislation, in the future Labour Code it is required that the appointed bankruptcy administrator must make a list of employees which shall carry on working at the employment place during the bankruptcy proceedings only upon consultation with the employees' representatives. Even in the case of redundancy due to the bankruptcy, the information and consultation procedures

must be complied with provided that the redundancies are considered collective redundancies as set out in the European Union directive 98/59/EC. What is new, it is directly established by law that during the consultations the employer and the employees' representatives may conclude a collective agreement or a different agreement.

The issues concerning the procedure of termination of an employment contract include a notice of termination and execution thereof. It is provided that a notice must be given in writing and the mandatory content thereof is specified (reason for termination and the law norm, specifying the legal grounds of termination, date of termination of employment relationships). The Labour Code includes the principle formulated in the case law, according to which, in case an employee has temporarily lost his or her functional capacity or has been on leave at the end of notice period, the end of the notice period shall be put forward until the end of temporary incapacity for work or of the leave. The employer may also put forward the date of the expiry of an employment relationship until the end of notice period without permitting the employee to work during the notice period, however, paying the wage for the whole notice period and the severance pay (if provided for).

As for formalization of the termination of contract, the Code provides that, in case there is a reason for the expiry of an employment contract, the employer must take a decision in writing to terminate the employment contract. Such decision is considered the basis for the expiry of an employment contract, with the exception of the cases where there are restrictions provided for by laws or labour law norms that are applicable for the employees (in this case the date of the expiry of the employment contract is put forward until the expiry of the restrictions on termination of the contract).

An employer must make a full settlement of accounts arising from employment relationships with an employee being dismissed from work before the expiry of employment relationship, with the exception of cases where the parties agree that the accounts will be settled with the employee not later than within six months. In any case the wage due to the employee must be paid not later than within two weeks from the expiry of employment relationship. Upon the expiry of employment relationship, where the settlement of accounts is delayed through no fault of the employee, the employer, as under the current regulation, must pay the employee base (rate) wage for the delayed time. However, the Code sets limits on the amount of this kind of penalty – it must not exceed wage for three months. On the expiry of the three-month term, the interest at the rate established by this Code or other labour law norms shall be payable.

Chapter VI. Types of employment contracts

Besides the already well-known types of employment contracts (indefinite-term contract, fixed-term contract, temporary employment contract), the Labour Code establishes a whole set of new types of employment contracts - work training contract, apprenticeship contract, contract for unforeseen volume of work ("min 8

hours"), portfolio work contract, job-sharing contract, and employee-sharing contract.

As for the regulation of fixed-term contracts, the essential innovation is established with the possibility to conclude fixed-term contracts in the absence of the objective criterion of temporality. This does not contradict the European Union legislation provided that the maximum total duration of employment relationship and (or) the maximum number of renewals of the contract is determined. In Lithuania it is proposed to use this stipulation in the following way – employment relationships resulting from a fixed-term contract, in the absence of limitation of the number of renewals, may not continue longer than two years. The total duration of successive fixed-term contracts concluded with the same employee for the performance of different work may not exceed five years. Failure to comply with these requirements causes such employment contract become an indefinite-term contract. An exception is maintained regarding the fixed-term contracts with employees, who are appointed to their posts by collegial elective bodies, and other employees where, for the purpose of protection of public interest, the establishment of the term of a fixed-term contract is governed by other laws – such contracts may be renewed for an unlimited number of times on the grounds established by laws.

The Labour Code regulates the moment of the expiry of a fixed-term contract and the termination procedure more clearly – a fixed-term contract expires upon the expiry of its term provided that within the period of five days before the expiry of the term and five days thereafter at least one of the parties takes a decision to terminate the employment relationship. In case the employment relationships have continued for over one or three years, the employer's five-day or ten-day notice is required. For the first time the Lithuanian law provides for a severance pay in case the employee's fixed-term contract has lasted for over one year and has expired due to the expiry of its term – such employee shall be paid a severance pay in the amount of one monthly wage. In addition, other provisions of the European Union directive 1999/70/EC concerning non-discrimination, information of employees' representatives, etc. have been transposed in the Labour Code.

The Labour Code incorporates another type of employment contract – temporary contracts – which until now have been regulated by the Law on employment through the temporary-work agencies. A maximum term of five years is established for such contracts, however, such contracts may also be one-time intended for one assignment to user undertaking. Depending on the term of the contract, different terms and conditions on payment during non-working periods between the assignments are established. Other provisions of the European Union directives 2008/104/EC and 91/383/EEC (regarding the prohibitions for the employer and the user undertaking, the principle of non-discrimination, etc.) have been transposed in the Labour Code.

Work training and apprenticeship contracts are new types of employment contracts which should encourage employers to provide employees with work, in case they are seeking an opportunity to acquire professional skills. Contracts of this type are in all cases

concluded for a fixed term. Work training contract must be concluded for a fixed term and the maximum term must not exceed six months. Parties to the work training contract may contractually agree on compensation of the employer's expenses incurred in relation to training by an allocation of not more than 20 per cent of the employee's average wage for such compensation. The employer is obliged to appoint one of its competent employees as a supervisor who shall direct the training process, supervise the performance of work function, advice and consult the employee.

A contract for unforeseen volume of work should facilitate employment and encourage the adaptation to the changing demands of the market. It is a contract under which the exact volume of work activities in working days and hours is not foreseen in advance, however, an employee undertakes to perform a work activity upon a call of the employer. Employee's wage is paid only for the time during which the employee has performed the work function upon the call of the employer, however, the minimum duration of time worked shall be eight hours per calendar month. The Code specifies the obligations of an employee and an employer upon a call for work and an acceptance thereof, additional grounds for the expiry of the contract, prohibition for the employer to prevent the employee from working for another employer under the contract of employment, regardless of its type, during the term of the contract for unforeseen volume of work, or to establish less favourable working conditions for the reason that the employee has refused to accept the call or to change the volume of the work function specified in the call.

For the performance of tasks that do not require direct or immediate control of the employer the parties may choose a portfolio work employment contract under which the employee undertakes to perform his or her work function for the achievement of specific results while working at the place, other than the employment place. An agreement on this type of employment contract can be made upon the conclusion of a new employment contract, as well as by temporarily (not longer than for two years) changing the existing employment contract of the other type, and by entering into an agreement on portfolio work next to the existing employment contract of the other type. The contract may provide for work remuneration at an hourly rate or based on work results, or a mixed method of calculation may be used. It is likely that this type of employment contract will encourage parties not to hide the employment relationship under the form of self-employment or avoid undeclared work.

The Labour Code establishes two other completely new types of employment contracts which should help solve the problems that arise in cases where two employees take one job or the services of one employee are required by several employers at the same time. Under a job-sharing contract each of the two employees record their rate of working time, however, the distribution thereof in a day or a week depends on their agreement – in any case the employees must substitute each other in such a way that the fulfilment of work function is not affected. As for the employee-sharing contract, in the

contract concluded with one employee, instead of one employer, there could be indicated two or more employers for whom the employee perform a work function in a working day or week. Each of the employers, within the limits of the employee's working time allocated to them, have the right to exercise the employer's rights and fulfil the obligations in respect of the employee, as well as to ensure the application of the Labour Code and other labour law norms. The contract may provide that the employee's working time is not distributed among the employers in case the employee performs the tasks of several employer's at the same time, however, the part of the rate of working time remunerated by each of the employers must be specified.

The variety of employment contracts provided for in the Labour Code will allow both parties to make flexible agreements regarding various aspects of work organization and performance or termination of an employment contract. By regulating individual types of contracts, the Code aims to align the interests of employees and employers in order to promote employment, create jobs, whereas flexibility must not prejudice the interests of employees.

Chapter VII. The peculiarities of employment relationships

For the first time in the Lithuanian labour law, separately grouped are the legal norms which govern the employment relationships in a differentiated way depending on the particularity of the employee's work function (managing employees), on the terms and conditions of the fulfilment of the work function (posted employees), on the peculiarities of different spheres of economic activity (artistic and pedagogic employees, professional athletes, whose job or relationships with the employee require specific regulation, are distinguished), on the exclusive nature of work, the place of performance of work (posted employees), or depending on the size of the employer's undertaking (employers employing less than 10 or less than 5 employees). Such a differentiated regulation in respect of particular employees and employers is necessary not only because of the peculiarities of employment relationships which up to now have received too little attention, but also because of the need to ease the administrative and substantial burden of labour law on the small employers, thereby promoting the competitiveness of small and micro-enterprises, and taking into account the peculiarities of the personal relationships between several employees.

Managing employees are divided into the employer's, as a legal person, single-person managing bodies, and managers of branches and representative offices (the Labour Code and the peculiarities provided for in the Code shall apply to them), members of management and supervisory bodies of a legal person (the Labour Code shall not apply to them), and other managing employees of a legal person, i.e. the employees which are entitled to give mandatory instructions to subordinate employees (the Labour Code shall apply to them in full scope without reservations). The peculiarities contain essentially the principles formed by the case-law regarding the conclusion and termination

of contracts and the liability of single-person managing bodies. For example, it is established that the liability of the head of a legal person for losses inflicted by him or her, as an employee, and sustained by the legal person, shall be governed by the labour law norms, whereas the liability for failure to fulfil his or her civil duties or their improper fulfilment shall be determined under the civil law norms. The head of a legal person shall dispose of his or her working time at his or her own discretion without violating the requirements for the maximum working time and the minimum rest period, as set out in the labour law norms. As at present, work on rest days and public holidays and overtime work is not recorded and additionally paid for, however, the Labour Code does not permit the application of this exemption in respect of the other managing employees. Additional regulation is introduced in cases when an existing employee is appointed or elected the head of a legal person – the Labour Code establishes their right to return to the previous job at the expiry of the manager's fixed-term contract or their term of office.

Artistic employees are employees who work at theatre or concert organizations and perform artistic activities while holding artistic office or performing specific creative assignments (in order to create, develop and publicly perform performances, concerts, literary or artistic programmes). An employment contract may be concluded for the performance of specific creative assignments (a fixed-term contract) or in order to hold an artistic office. The latter employment contract is of indefinite duration unless it is concluded for the period of up to one year in order to create, develop and perform in public a performance, a concert, a literary or artistic programme. In case a fixed-term employment contract is concluded, the specific provisions on the conclusion and termination of fixed-term contracts shall be applied (i.e. the maximum two-year term of a fixed-term contract is applied). The Labour Code provides for specific norms concerning working time, remuneration, sabbatical leave and idle time.

Pedagogic employees are employees who work at schools or schools of higher education, and educate and teach pupils and students under the formal or non-formal education or study programmes, as well as educators implementing pre-school educational programmes. A contract may be concluded for the performance of specific educational assignments (fixed-term contract) or for pedagogic position (educator, teacher, professor, etc.). The latter employment contract is of indefinite duration unless it is concluded for the period of up to one year for the specific educational work (in order to create, develop and perform an educational training course or programme) or for an hourly job which is remunerated on the basis of teaching hours (not more than 120 contact hours per year). Special provisions are intended for the regulation of working time and sabbatical leave.

In case artistic or pedagogic employees hold administrative office at their place of employment, an agreement on additional work shall be concluded (without violating the requirements for the maximum working time and the minimum rest periods) or an

additional pay shall be paid for the performance of additional function.

The relationships between a professional athlete and a club are recognized as employment relationships, not civil, in most of the European countries, as well as in the case-law of the Court of Justice of the European Union. The regulation of work of professional athletes in the Labour Code, but not by the norms of civil nature (Physical education and sports law), is a novelty in Lithuania. The specific features of employment contract for sporting activities are numerous: possibility of an examination to determine the level of physical fitness before the contract comes into effect, derogations from the provisions of the Code in the area of work remuneration, working time and rest period, physical fitness, behaviour, termination of contract, liability of the parties, additional positions of the employee and jurisdiction (resolution is also possible by commercial arbitration). The employee's status should provide these persons with additional possibilities to defend their interests collectively and to pursue the regulation of their employment conditions through collective agreements.

Posting is a relatively common phenomenon encountered during the performance of an employment contract, whereby an employee performs his or her duties in a place other than his or her permanent place of work. In practice, many problems arise regarding the time spent travelling during the posting, legal attribution of rest periods, used in other locations, to working time, and remuneration. The Code sets the principle according to which the time of performance of a work function in other location and the time spent travelling should be considered working time (regardless of whether the work is performed during the night, or on a rest day or a public holiday, or whether it is overtime work; and it must be remunerated accordingly), since, in case of posting, the employee must work according to the usual working time regime, unless the employer has intended other obligations. In order to transpose the provisions of directive 96/71/EC, additionally, the employment conditions of employees posted to Lithuania by foreign employers are regulated. In contrast to the Law on guarantees for posted workers (which is repealed upon enactment of the Labour Code), the Lithuanian law shall not regulate the employment conditions of Lithuanian employees posted to provide services in the states of the European Union, since they are already regulated by the national laws of the said states. As at present, it shall be required that a foreign employer posting a worker to perform temporary work in the territory of the Republic of Lithuania for a period exceeding 30 days or to carry out building work shall, in accordance with the established procedure, notify in advance the territorial division of the State Labour Inspectorate of the employment conditions applied to the employee. Those conditions shall not be less favourable than the minimum requirements established by the mandatory labour law norms of the Republic of Lithuania, e.g. in respect to the minimum wage, standards of safety at work, etc.

Depending on the average number of employees of the employer, the Labour Code allows small employers to depart from the application of the mandatory provisions of the Labour Code. The employers employing less

than ten employees may be exempt from certain obligations of information, they are entitled to set a longer trial period, a shorter period of notice, to terminate an employee during the period of temporary incapacity for work (in case it lasts for more than two months), not to set up a joint committee to make the annual leave schedule, to make an agreement with an employee for a 30 per cent lower per diem rate, to escape an obligation to change the part-time employee's working time or to provide paid educational leave. The employers employing five or less employees on average, in addition, are entitled to terminate an employee for other important, however, not discriminative, reasons upon giving a two-weeks' notice and paying a severance pay in the amount of an average wage, not to grant the employee paid annual leave when employment relationship with the employee has lasted less than one year and to pay compensation for unused annual leave instead, not to apply the rules on making the annual leave schedule when granting leave.

Chapter VIII. Working time and rest period

In the Labour Code working time and rest period are regulated separately. A short universal definition of working time is worded, according to which the working time shall be any time during which an employee is under the employer's command and performs duties under the employment contract. In addition, the periods which must be attributed to working time are specified (e.g. time spent travelling from the employment place to the place of a temporary performance of a work function specified by the employer, the duration of on-call duty, time spent improving qualification under the employer's authorisation, etc.).

In the Labour Code a concept of rate of working time is introduced which is distinct from the concept of work time regime. Rate of working time is an average time during which an employee must perform work for the employer over a certain period of time to fulfil duties under the employment contract and receive remuneration accordingly. This rate of working time is defined in the employment contract or a default rate of working time of 40 hours per week applies. This is the maximum rate since labour law norms may only set a shorter rate of working time or the parties may agree on a part-time work. Whereas work time regime is the actual distribution of the rate of working time in a working day (shift), week, month or other recording period which may not exceed four consecutive months. If the contract does not provide otherwise, an employer and an employee may choose one of the following types of work time regime: a fixed duration of working day (shift) and a fixed number of working days in a week; summary recording of working time whereby the rate of working time for the whole recording period is fulfilled during the recording period; flexible work schedule whereby an employee must be at the employment place during the core hours of working day (shift) and may work the rest of the time of working day (shift) before or after those core hours; or a different individual working time regime. If it is not provided otherwise, the rate of working time is deemed fulfilled during the recording period of one week when work is performed five days a

week and the same number of working hours each day.

Further, in the Labour Code new concepts of requirements for the maximum working time and requirements for the minimum period of rest which comprise the requirements for the working time under the directive 2003/88/EC are introduced. For example, it is provided that the average working time for each seven-day period, including overtime but excluding the time of additional work, must not exceed 48 hours, and working time during working day (shift), including overtime and work under the agreement on additional work, may not exceed 12 hours, excluding lunch break. These requirements are of a mandatory nature and may not be derogated from by any agreement.

The working time of employees working at night is newly regulated in accordance with the requirements of the abovementioned directive, whereas the institute of on-call duty has faced substantial changes. The following types of on-call duty are distinguished: active on-call duty regarding occupations and jobs where an employee performs his or her work function serving on-call duty; passive on-call duty when an employee must be at the place specified by the employer, ready to perform his or her functions when necessary; and passive on-call duty served at home when an employee is ready to perform certain actions or to arrive at the place of employment when necessary during the usual period of rest. In the latter case an additional pay of not less than 10 per cent of the base (rate) wage for the maximum period of on-call duty during the month must be paid, and the actually performed actions must be paid for as the working time.

Overtime work is time when an employee is actually working exceeding the duration of the working day (shift) established by the work time regime. The employer may assign an employee to overtime work not exceeding one hour during the working day (shift) only with the consent of the employee. During the period of 7 consecutive calendar days an employee may not work more than 8 hours of overtime, unless the employee consents in writing to working up to 12 hours of overtime during a week. When working overtime, the requirements for maximum working time and minimum rest period may not be violated.

As for working time recording, it is proposed to abandon the formal recording of the working time of each employee, instead, it is required to record the working time only with regard to the employees which are subject to summary recording of working time and the employees working at night. Therewith arises the employer's duty to record deviations from the work time regime: the overtime actually worked by the employee, working time during public holidays and working time during rest days if it hasn't been provided for in the work schedule.

The regulation of working time is based on the fundamental principles specified in the directive 2003/88/EC. The duration of uninterrupted rest period between working days (shifts) may not be shorter than 11 consecutive hours, and per each seven-day period the employee is entitled to uninterrupted rest period of at least 35 hours.

A rest day is a day on which work is not performed according to working time regime. Employees may be assigned to work on rest days only with their consent.

The Labour Code provides for three types of leave: annual leave, special-purpose leave, and additional leave. For the purpose of calculating and granting the annual leave, working days are used instead of calendar days. The right to use part of annual leave (or receive monetary compensation for it in cases provided by law) occurs when the employee becomes entitled to annual leave of at least one working day, unless labour law norms provide otherwise. The Labour Code sets a limit until which an employee must use the right to annual leave which have occurred in the specific year – it is three years from the occurrence of the right to leave. Annual leave must be granted at least once a working year. At least one of the instalments of annual leave must not be shorter than ten working days.

Labour Code regulates the procedure of granting annual leave in greater detail. Annual leave for the second and subsequent working years may be granted at any time of the working year in accordance with the annual leave schedule. The annual leave schedule for the calendar year must be made not later than by 1st of May by the joint committee of the employer and the representatives appointed by the employees' representatives. In case there are no representatives, annual leave is granted by the employer taking into account the preferences of the following employees (in order of priority): pregnant women and employees raising at least one child under one year of age, employees raising at least one child under six years of age or a disabled child, employees raising two or more children, employees which have taken annual leave for less than 10 working days in the last calendar year, employees which have an unused annual leave for the past working year. The Code also sets the categories of employees whose request for leave must be satisfied by the employer: women and parents before or after a maternity leave or a paternity leave, employees who are studying without interruption of their employment, etc.

During annual leave the employee retains his or her wage (holiday pay) which is paid not later than on the last working day before the commencement of annual leave. In case the granted leave is longer than twenty working days, holiday pay paid to the employee for the instalment which exceeds this period must be paid not in advance, but during the leave, in accordance with the procedure and time periods of payment of wage.

The types of special-purpose leave (maternity, paternity, parental, educational, unpaid) remain essentially unchanged, however, a new horizontal provision is established according to which an employer shall ensure the right of employees to return to the same or an equivalent job (position) after special-purpose leave on conditions which are not less favourable than the former working conditions, as well as to benefit from any improvement in conditions, including the wage, to which they would have been entitled during their absence.

An important provision is introduced in the regulation of educational leave with the aim to develop a policy of competitive and competent labour market. According to this

provision, employees whose employment relationship with the employer has continued for more than one year shall retain wage for educational leave lasting up to five working days a year, and half of wage for educational leave lasting up to twenty working days a year, unless labour law norms or employment contract provide otherwise. As a novelty, a provision concerning unpaid leave and providing flexibility for employees has been introduced. According to the provision, at the request of the employee and with the consent of the employer, the employee may be granted unpaid free time during the working time for his or her own personal needs. The parties may also agree to move working time to another working day (shift) without violating the requirements for the maximum working time and the minimum rest period.

Chapter IX. Wage

Labour Code provides for a universal concept of wage (remuneration for work performed by an employee under a contract of employment) which is further specified in detail to cover four types of payments: base (rate) wage (hourly wage or monthly salary); additional pay agreed by the parties or paid in accordance with labour law norms or the system of remuneration for work applied at the employment place; bonuses for qualification, additional pay for non-conformity with the normal working conditions, additional work or performance of additional functions or assignments; and bonuses and incentive payments that are not obligatory according to the labour law norms.

An important novelty is the introduction of base (rate) wage since it is used as a reference point to calculate additional and increased payments (e.g. for overtime work). The system of remuneration at the employment place or in the employer's undertaking must be established by collective agreement. What is new, the Labour Code provides that, in case there is no collective agreement, at the employment place where the number of employees exceeds 50, the remuneration system must be approved by the employer. It must be developed in such a way so as to avoid discrimination on grounds of gender.

A base (rate) wage (not the earnings which currently might be provided for in an employment contract) specified in the employment contract may not be lower than the established minimum wage. In the Labour Code it is specified that the minimum wage is the lowest permissible pay for unqualified work paid for the employee who has performed work for one hour or the working time rate of the whole calendar month respectively. The Government shall approve the methodology of changing the minimum wage and set up a commission of experts for the implementation thereof. The minimum hourly wage and the minimum monthly salary shall be approved by the Government upon receipt of the conclusion of the commission of experts.

Remuneration for work on rest days and public holidays and for overtime work is regulated more clearly. It is proposed that overtime work, night work, work on a rest day, which has not been provided for in the work schedule, shall be paid for at the rate of one time and a half of the employee‘s base (rate) wage, and work on a public holiday shall be paid for at the double rate of the

employee's base (rate) wage. The payment of overtime on a rest day or public holiday, which is currently interpreted diversely, has been regulated. Overtime work on a rest day which has not been provided for in the work schedule, shall be paid for at the double rate of the employee's base (rate) wage, and overtime work on a public holiday shall be paid for at the rate of two times and a half of the employee's base (rate) wage.

It is important to note that the increased rate is applied in respect of the base (rate) wage, but not the average wage, as it is at present and which causes additional costs and additional accounting work when calculating it. This should ease bureaucratic burden and make remuneration for work more transparent and easier under the said conditions.

The regulation of protection of employees' interests in case of the employer's insolvency remains basically unchanged, however, the problem of remuneration for the work of the employees working during the insolvency proceedings, which is common in practice, has been solved. The wages for the work of the employees who need to participate in the insolvency proceedings, except those participating in the continued economic-commercial activities, is paid from the recourses of funds established for insolvency administration. The employees who, after the insolvency proceedings, participate in economic-commercial activities must be paid from these resources first.

The same rules continue to apply for the calculation of the late penalties where the wage or any other payments relating to employment relationships have been paid late, however, these rules have been transferred to the Labour Code and the special law that has governed this matter has been repealed.

Chapter X. Compensation of damages

The regulation of disciplinary liability[2] and material liability, as relics of Soviet labour law, have been abandoned in the Labour Code. New legal norms regulating compensation of damages caused by one of the parties to the other party in employment relationships are included in the institute of compensation of damages. The main principle stipulates that each party to the employment contract must compensate the other party for property damage, as well as non-property damage, caused by violation of its work duties by its own fault. Further the Code contains provisions aimed at balancing the interests of the parties. First, it should be noted that the institutes of employee's limited and full material liability, in principle aimed at formally defending exclusively the interests of the

[2] The employer's right to dismiss the employee from work in case he or she, through his or her own irresponsible actions, repeatedly commits violations of work duties is regulated in the chapter on employment contract. Bonuses and reduction of additional pay, as an incentive or a sanction for the violation of work duties, are regulated in the chapter on work remuneration.

employee, have been repealed. In the Code a conception is developed according to which, departing from the principles of civil law, the amount of damage to be compensated is calculated strictly. When determining the amount of damages to be compensated, account must be taken, inter alia, of the value of property less depreciation and natural reduction of property and the expenses (direct losses) sustained, the fact that the damage caused is typical to the employer's activities, and commercial and industrial risk borne by the employer, the degree of fault of the party and actions taken to avoid damage, as well as the fault of the other party or responsibility for the infringement which caused the damage. Additional protection of an employee is established in the legal norm according to which a body for the resolution of labour disputes may reduce the amount of the compensation of damage taking account of the property status of the employee, with the exception of cases where damage was caused deliberately.

An important novelty aimed at the protection of employees from illegal actions of employer is established in the institute of compensation of non-property damages. It is provided that compensation of non-property damage must also discourage the employer from committing such labour law violations in the future. When determining the amount of non-property damage to be compensated, account must be taken, inter alia, of financial and economic opportunities of the party which have caused the damage, as well as property-damage which must be compensated by the guilty party. Thus, the amount of non-property damage will not only depend on the severity of violation or the consequences thereof but will also be such as to economically discourage employers from making such violations in the future. An employer may deduct damage which does not exceed the amount of the employee's six average wages by the order made within one month which may be brought before the labour disputes commission, and thereafter – before the court. In case wage deduction exceeds the amount of the employee's six average wages, or the time limit has been exceeded, the employer must claim damages in accordance with the procedure of settling labour disputes. An employee is entitled to claim damages caused by the actions of the employer in accordance with the same procedure. It should be noted that general period of limitation is three years.

Chapter XI. Safety and Health at Work

In contrast to the Labour Code which is currently in effect, the proposed draft Labour Code does not regulate in detail all the issues of safety and health at work since they are comprehensively regulated by the special Law on safety and health at work. The Labour Code just establishes the principle that employees must be trained and instructed to work safely with specific dangerous chemical substances and they have the right to self-defense – employees have the right to refuse to work in case there is danger to their safety and health, as well as to perform work which they have not been trained to perform safely, or when collective protective equipment has not been installed or necessary personal protective equipment has not been provided. The employer must compensate for the damage

caused to the employee's health due to injury or any other health impairment, or employee's death or an occupational disease, in accordance with the procedure of compensation of damages established in the Labour Code.

PART III COLLECTIVE EMPLOYMENT RELATIONSHIPS

The part of collective employment relationships of the valid Labour Code consists of the regulation of general provisions, a national, sectorial and territorial collective agreement, a collective agreement of an enterprise and collective labour disputes. In the Project of the Labour Code, the chapters of collective employment relationships are structurally divided by general provisions, by the institutes of parties of social partnership (works councils, employees' trustee, trade unions, representatives of employers) and by forms of social partnership (labour and social affairs councils, collective bargaining and collective agreements, information, consultation and other participation of employees' representatives in the employer's decision-making process).

Chapter I. General Provisions

This chapter sets forth the principles of social partnership as the mechanism of interests' coordination between parties of employment relationships and the state (equality of parties, goodwill, respect for legitimate mutual interests, voluntary and independent assumption of responsibilities binding the parties, actual fulfilment of responsibilities and other principles) as well as stipulates levels of social partnership (national, sector (production, professional), territorial and employer). It should be noted that a workplace level is not considered as the usual level of social partnership, however, the Labour Code allows social partners to agree on such level. Parties of social partnership are determined and their regulation is developed in Chapter II, while forms of social partnership - in subsequent chapters.

The norms of collective employment relations of the Labour Code are applied not only to employees, but also to persons working on other grounds (civil servants, even self-employed). Civil servants shall have the right to conclude collective agreements as well as participate in collective actions in conflicts over interests (strike, lockout); by now the peculiarities of implementation of said rights (e.g. limitations, implementation order) are established in special laws (the Law on Civil Service, statutes, etc.).

Chapter II. Parties of Social Partnership

There is no detailed regulation of parties of social partnership in the valid Labour Code, there are only particular provisions due to the representation of subjects of employment relationships. The detailed regulation of representatives of employees – works councils and trade unions – is stipulated in separate laws, i.e. the Law on Works Councils and the Law on Trade Unions. It is suggested to consolidate them in the new Labour Code and lay down the particular general rules for all representatives of employees as well as exclude the specifics of each subject. The separate section discusses representatives of employers.

The system of employee representation is based on several principles. Currently, there are two organs for the defence of employees' rights and interests – trade unions operating

on different levels, which activities are based on the freedom of association and voluntary membership, and works councils in enterprises, which activities are based on the competence provided to elected representatives by a ballot at a general staff meeting. The said competence is implemented through rights established by the special Law on Works Councils. It should be noted that the valid right gives a priority to trade unions (trade unions cannot exercise the functions which according the law are recognised as the prerogative of trade unions); however, the law does not essentially exclude such priority rights, therefore, works councils and trade unions have almost the same competence. Only one provision helps to avoid the direct competition of these two institutions, which is that a works council cannot be elected where a trade union operates. Nevertheless, the trade union established later, when there is a work council in an enterprise already, does not receive the representation of all employees automatically. This unknown to the world system was not successful in Lithuania: the scope of employee representation and the number of collective agreements as well as their quality in the significance of the regulation of employment relationships has not been basically improved. According to the fact that in Lithuania there is the dualistic employee representation system, it is suggested to develop it further on the basis of the principles of dualistic employee representation systems recognised in Western Europe:

- trade unions shall have the right to organise themselves in any level of social partnership and represent their members collectively and individually. They shall have exclusive rights to bargain collectively and conclude collective agreements (first of all, to regulate wage, work and rest time, issues of social guarantees) as well as the right to collective actions;
- works councils elected by all employees of an enterprise shall be organised on enterprises' level (they must be established compulsory in an employer's enterprise where the average number of employees is 50 or more) as well as represent all employees of an enterprise but only in information, consultation and other procedures of participation, under which employees and their representatives are involved in the employer's decision-making processes due to the European Union legal acts and the requirements of Lithuanian legal norms. Within the framework of its competence, a work council may conclude an agreement with an employer but only concerning the implementation of its rights. Where the average number of employees is up to 20 employees in enterprises an employees' trustee might be elected.

The Labour Code emphasises that all activities of employees' representatives shall be organised and exercised by their mutual co-operation so that general interests and rights of employees shall be protected as efficiently as possible. Employees' representatives (works councils and employees' trustees) shall not exercise such functions of employee representation, which shall be considered as exclusive trade unions' rights.

The new Labour Code lays down the guarantees of all employees' representatives unanimously and systematically, excluding:

- guarantees of the independence of employees' representatives;
- guaranties of the activities of employees' representatives;
- guarantees and protection against discrimination of the representatives

implementing the representation of employees.

In order to implement properly international standards, there is the regulation of new peculiarities. First of all, not only the protection of employees' representatives against their dismissal from work on an employer's initiative is established, but also protection against the deterioration of their working conditions, as compared with their previous working conditions, or as compared with other employees' of the same category working conditions, as well as the protection against discrimination is established. It is important that the said protection is valid not only for the period of their term of office, but also for six months after this period. It is stipulated that if an employer wants to terminate an employment contract with an employees' representative or to change his working conditions during mentioned periods, he needs to receive a prior consent of an impartial subject – the state labour inspector. The latter gives the consent if an employer submits the data that the termination of an employment contract or the changes of working conditions are not related to the performance of employee representation activities. The decision of the state labour inspector not to give the consent may be contested in court. The Code specifies the number of trade unions' members, which are covered by these guarantees – guarantees are applied for such number of members of the governing body of the trade union functioning on an employer level, as it should (shall) be the number of members of a works council, depending on the average number of employer's employees.

Works Councils

According to the valid Labour Code, a works council can be established in an enterprise where it has no functioning trade union and where a staff meeting has not transferred the function of employee representation and protection to the trade union of the respective sector of economic activity. In compliance with the said conditions, works councils acquire substantially all the rights of employee representation, including the right to conclude collective agreements and to organise strikes at enterprise level. Also, the detailed regulation of the status of works councils is stipulated in the separate Law on Works Councils. As it was mentioned before, in the new Labour Code it is suggested to implement entirely dualistic system of employee representation, where both works councils and trade unions may operate in an enterprise, separating their basic functions, i.e. the main function of a work council – the information and consultation of employees, and for trade unions – collective bargaining and the conclusion of collective agreements as well as the declaration of strikes.

Basically, the new Labour Code besides any greater amendments integrates the Law on Works Councils. It is suggested to establish compulsory works councils in an employer's enterprise, establishment or organisation where the average number of employees is 50 or more. Also, there is the possibility to create a works council where the average number of employees is more than 20 but less than 50 and where the elections of a work councils are initiated by employees or by the trade union operating on the employer's level. The number of members of a works council depends on the average number of employer's employees and it varies from 3 to 11 members.

In the forthcoming Labour Code, there are peculiarities related to the role of trade unions in the establishment of works councils. Besides employer's employees, the establishment of works councils may be initiated upon the proposal of the trade union functioning on the employer level and

representing at least one tenth of employer's employees. Also, it is set forth that members of a trade union shall not exceed one third of members of a works council. Members of the works council shall not be members of the governing body of the trade union functioning on the employer level.

The Project refuses the right of a works council to conclude a collective agreement with an employer in an enterprise or it's structural division (the branch, representative office) as well as the right of a work council to take a decision to call a strike and to lead it, where an enterprise has no functioning trade union and where a staff meeting has not transferred the function of employee representation and protection to the trade union of the respective sector of economic activity. Besides the currently existing duties, the Project sets forth the duty of a work council to cooperate with all trade unions functioning on the employer level on mutual trust basis as well as maintain neutrality in collective labour disputes over interests, which are initiated by trade unions. Further, there is the possibility to conclude an agreement with an employer, on the most important issues of the organisation, its funding and other issues on the activities of a works council may be discussed which promote the cooperation between them. The Code transfers the provisions of Directive 2001/23/EB concerning the continuation of the activities of employees' representatives in the event of transfers of undertakings, businesses or parts of undertakings or businesses. In Lithuania, it has not been done until now.

Where the average number of employer's employees is less than 20, an employees' trustee shall be elected in a secret ballot at a staff meeting for a term of three years. The provisions, which regulates the activities of works councils, shall be applied to the employees' trustee *mutatis mutandis*.

Trade Unions

As in the case of works councils the detailed regulation of the legal status of trade unions is incorporated in the Code. Besides, there are stipulated the peculiarities related to the establishment and membership of trade unions. According to the valid Law on Trade Unions, the natural persons who have legal capacity in employment relationships have the right to form and join trade unions. The Project clarifies that the legal norms regulating the legal status of trade unions shall be applied to employees and persons working on other grounds, as those established by the Employment Law. Also, it is stipulated that the members of trade unions operating on higher level, i.e. national, sectorial, territorial or on vocational basis might be temporarily unemployed persons as well as unemployed persons who have reached retirement age.

In the Project, there is the clear separation of the establishment of trade unions according to their activities' level: trade unions functioning on an employer level (in the case specified in the Project, a trade union may be established in its structural division – the branch or representative office), trade unions functioning on vocational basis as well as on a national, sectorial and territorial level. It is set forth that members of the trade union functioning on an employer level shall be only employees of this employer. There is the duty for the governing body of a new trade union to notify the employer of the composition of newly established or amended structure of the governing body's members (including the names and surnames of employees, who are the members of the governing body, their offices in the governing body and the period of their term of office). Trade unions may be formed on vocational basis, if they have more than 20 founders. It is determined that

sectorial and territorial trade unions may join the national level trade unions' organisations. The trade unions on an employer level functioning in the respective sector of economic activity as well as individual employees employed in the enterprises functioning in the respective sector of economic activity may join the sectorial level trade unions' organisations. The trade unions on an employer level functioning in the respective territory (municipality) as well as individual employees employed in the enterprises functioning in the respective territory may join the territorial level trade unions' organisations.

Representatives of Employers

According to the Labour Code an employer is represented by the manager of an enterprise both in individual employments relations and collective employment relations. Also, it is stipulated that employers may be represented by other authorised administrative officers in enterprises. On a higher level of social partnership employers are represented by employers' organisations which are considered to be such according to the Law on Association. In the valid Labour Code, the status of employers' organisations, basically, is not regulated.

In the project of the Labour Code, it is divided by the employer - natural person, who participates in social partnership and undertakes his rights and duties by himself; and the employer – legal entity which is represented by the sole governing body of a legal entity or by its authorised persons in social partnership. Further, the definition of an employers' organisation and the basis for its activities is determined. Additionally, the Project sets forth the functions of employers' organisations, e.g. initiation of bilateral and trilateral councils as well as participation in their activities; participation in collective bargaining and conclusion of collective agreements; representation of the employers' organizations and the interests of their members in relations with trade unions, state and local authorities, etc.

Employers – which are financed from the state and municipal budgets, the budget of the State Social Insurance Fund and resources of other funds, established by the State –shall be represented by the Government or its authorised institution in the social partnership. It shall be governed *mutatis mutandis* by the legal norms regulating rights and duties of employers' organisations.

Chapter III. Forms of Social Partnership

The first and the "weakest" in a legal sense but the "strongest" in a political sense form of social partnership is the participation of social partners in labour and social affairs councils.

The Project regulates the Tripartite Council functioning on the national level almost the same, although, it stipulates its functions. The Tripartite Council shall be the advisory and the consultative forum of the Government and other authorities, which may submit conclusions and proposals in the particular area of labour and social policy established by the Project. The concluded tripartite agreement shall not include norms of labour law – they shall act only as political documents or the agreements, which determine only reciprocal rights and duties of social partners. Also, the Project foresees the provisions in case of the acceptance of the new members in the Tripartite Council. Such a decision shall be agreed by the majority votes of its members in the Council.

The establishment of trilateral, bilateral labour and socials affairs councils is clarified by stipulating that they shall be established on the sectorial and territorial levels of social

partnership upon the initiative of employees' and employers' organisations functioning in that level.

In the valid law, collective bargaining and the conclusion of collective agreements are stated as the form of social partnership. The Law on Civil Service also mentions collective agreements, although it does not lay down the conditions of their conclusion or other related conditions. The project of the Labour Code corrects this incoherence by stating directly that the norms, which regulate collective bargaining and collective agreements, shall be applied not only to employees but also to persons working on other grounds, as it is stipulated in the Law on Employment.

Currently, there is the abstract regulation of collective bargaining only stipulating that the subjects of collective employment relationships and their representatives shall reconcile their interests and settle disputes in negotiation. Moreover, the presentation of the initiative party of collective bargaining, the submission of demands, the opening of collective bargaining as well as the submission of related information is stated in the Code. In the Project, collective bargaining is integrated with the regulation of collective agreements. The detailed order of collective bargaining is stipulated as follow: the presentation of the initiative party of collective bargaining, the submission of demands, the delegation of representatives in a collective bargaining group, the opening of collective bargaining, context of the agreement of a collective bargaining group under the course of collective bargaining. Furthermore, there is the regulation concerning the rights and duties of the parties of collective bargaining, which includes the right to receive information, the right to invite experts as well as the duty to protect confidential information.

In the valid Labour Code collective agreements, i.e. their content, parties, their application area, conclusion order, validity, termination, control, disputes arising from the conclusion and execution of these agreements are separately regulated depending on the levels of collective bargaining. It means that the separate regulation is applied to collective agreements of enterprises and the separate regulation to collective agreements on a higher level (national, sectorial and territorial). In the Project of the Code, all collective agreements are regulated together by excluding particular peculiarities, which depend on the level of collective bargaining.

Currently, the parties of a collective agreement of an enterprise are the staff of the enterprise and the employer, who are represented by the trade union functioning in the enterprise or by the works council. The Project refuses the duality of the parties of collective agreement by stipulating clearly that trade union functioning on the employer or workplace level and the employer are the parties to a collective agreement. The Project stipulates peculiarities related to the content of collective agreements. The possibility to combine *in favorem* and *in peius* principles is established by stating that the norms of collective agreements may contain derogations from the conditions laid down in the Code, of course with exceptions (e.g. maximum work time and minimum rest time), if such collective agreements achieve the balance of employees' and employer's interests.

The dominant position of trade unions is even more sustained by several important provisions. Firstly, a trade union has the right to decide by itself about the conclusion of a collective agreement and its content, refusing the valid provision that the draft collective

agreement of the enterprise agreed between the parties shall be submitted to the staff meeting (conference) for consideration which can agree or disagree on it. Secondly, the application of a collective agreement is strictly tied with membership of organisations, which concluded it – collective agreement is applied only for the members of trade unions and employers' organisations which concluded it. It is stipulated that a collective agreement is applied generally to the employees – members of the trade union, who conclude it, but the other party, the employer, has the duty to apply the collective agreement on the employer or workplace level. This concept justifies the idea that only the direct representative of employees (a trade union) may agree on employees' better or worse working conditions. As well as supports the notion that a trade union does not have to bargain in order to stipulate more favourable conditions for all employees regardless of their interest or desire to be collectively represented. Such understanding is sustained additionally by the provision of the collective labour disputes' institute which stipulates that only members of a trade union shall have the right to take a decision to call a strike.

Currently, there is almost no regulation of collective bargaining in public sector. The Project regulates not only the peculiarities of collective bargaining in civil service but also in the public sector. It is set forth that the Government or its authorised institution after receiving the proposal to begin collective bargaining on a sectorial or inter sectorial level must invite the employers' organisations of the respective sector of economic activity operating in private sector. Said organisations may participate together in collective bargaining. In order to achieve wage bargaining as the main object of collective bargaining in public sector , it is suggested that the bargaining should be finished no later than the Ministry of Finance starts to prepare the project of the State budget as well as the project of financial indicators of municipal budgets. Further, the parties of the prepared and agreed project of a sectorial collective agreement shall receive the conclusion on it from the Ministry of Finance. The maximum term of a collective agreement in public sector is three years.

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses as well as Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies had been transferred formally to the Labour Code, but until now there were drawbacks in legal regulation. Therefore, the Project elaborates the content of employees' information and consultation. Besides regular employees' information and consultation, information and consultation in the event of transfers of businesses or parts businesses as well as in the event of collective redundancies, the Project states the duty of the employer, who employs average fifty employees or more, to inform employees and consult with them in the procedure of confirming the local norms of labour law (work rules, the introduction of new technologies, the protection of employees' private life, etc.). Representatives of employees shall be informed about these forthcoming decisions before one month until their confirmation. They shall have the right to submit remarks and proposals as well as to initiate consultations. A works council and an employer due to his decisions may conclude an agreement.

The Project of the Labour Code stipulates the completely new possibility to participate in management. This means that in particular cases employees shall have the right to allocate the part of members of the supervisory body in an enterprise, establishment or organisation. Such cases and the proportion of representation shall be stipulated in the laws regulating the activities of separate employers – legal entities (e.g. the Law on Companies, the Law on State-owned and Municipal Enterprises, etc.). Besides, collective agreements as well as the separate agreement of an employer and a works council may state the particular cases that employees' representatives shall have the right to participate as observers or in advisory capacity in the meetings of collegial management and supervisory organs when they deal on the issues related to employees' working conditions.

PART IV. LABOUR DISPUTES

Section I. General Provisions

In the Project of the Labour Code labour disputes are defined as disagreements of participants of employment relationships arising from employment or related legal relations. In the valid Labour Code, there is separate regulation of collective labour disputes and individual labour disputes. In the Project, both collective and individual labour disputes are stipulated structurally in one chapter regulating labour disputes. Therefore, the legal regulation system of labour disputes is changed in principle. The Project divides labour disputes by their objects and subjects::
1) labour disputes over rights (individual labour disputes over rights and collective labour disputes over rights);
2) collective labour disputes over interests.

Such separation is very important in order to delimitate between the interests' conflicts arising due to the stipulation of new rules in bargaining and the disagreements arising due to the non-performance or improper performance of undertaken and compulsory obligations.

The general provisions of the Project of the Code set forth that the hearing of labour disputes shall be based on the principles of the respect for the other party's legitimate interests, the economy, the concentration, the cooperation between parties in order to solve a dispute as soon as possible and in the acceptable conditions for both parties. Also, there is the possibility of legal presumptions in legal disputes, e.g. in cases of dismissal and in cases of the illegal refusal to employ, the legacy of dismissal or refusal to employ shall be proved by an employer.

For the first time in Lithuanian labour law history there is the regulation on issues related to the jurisdiction of international labour disputes' hearing. The Lithuanian bodies responsible for settling disputes may hear all labour disputes arising from employment relations when these relations formed or are being carried out in the territory of the Republic of Lithuania, or if the employer in these employment relations is governed by the jurisdiction of the Republic of Lithuania, where laws or norms of the European Union Labour Law or international agreements do not provide otherwise. Meanwhile, in civil cases arising from labour disputes over rights, their jurisdiction is determined by the rules of the Code of Civil Procedure.

Section II. Settlement of Labour Disputes over Rights

The Project lays down the peculiarities of labour disputes over rights. The party of a

labour dispute shall be defined as the person, who has expressed his will to conclude an employment contract and his candidacy was refused, as well as the person who has right to an employee's wage or compensation for damages caused by the employee's death. The Project stipulates the competence of the bodies hearing labour disputes which consists of the obligation to restore a violated right; award of pecuniary or non-pecuniary damages (in the procedure established by the norms of labour law or agreements – fines, interests); termination or modification of a legal relationship or obligation to carry out any other action set forth in other laws or the norms of labour law. It is important that in the settlement of collective labour disputes over rights, the body hearing a labour dispute may impose a fine up to 3.000 euro upon the part who violated laws in favour of the other party. The amount of fine shall be in proportion with the seriousness of the offense and deter future infringement.

Currently, labour disputes over rights are heard by labour dispute commissions or by courts. In the Project it is suggested to retain these institutions, but expand the competence of a labour dispute commission – it may hear disputes arising due to termination of employment contracts, suspension from work, award of non-pecuniary damages, as well as collective labour disputes. Now the hearing of all said disputes is the exclusive jurisdiction of courts. Such extension should establish the general compulsory pre-trial body for the resolution of labour disputes over rights where labour disputes are heard without applying to the court.

Furthermore, such a model saves funds of the State and parties of a labour dispute, also the duration of settlement is shorter, because of the less complicated decision making procedure where social partners try to find the resolution to the dispute, which could be acceptable by both parties in order to reconcile or at least better match their interests, rather than look for one party's approval of truth or denial. The legal expenditure of a party incurred during the resolution of a labour dispute are not reimbursed, which means that employees are not discouraged from initiating disputes for potential losses. As it is stipulated by the Law on Commercial Arbitration, labour disputes over rights may be heard by the Commercial Arbitrary, if parties agreed on such hearing later than a dispute arose.

The project states compulsory settlement of pre-order labour disputes over rights. Firstly, they must be resolved between the parties by negotiating, except for the individual labour disputes due to termination of employment contracts. If negotiations fail or there is no respond to the application from a party of the dispute due to restoration of violated rights during the established terms, the party have the right to initiate the hearing of a dispute over rights in the settling bodies of labour disputes (labour dispute commission, court).

All labour disputes over rights are heard in the labour dispute commission (composition retains almost the same as in the valid Labour Code). The participant of employment relationships (employee, employer, trade union, works council), whose rights were violated must apply to the labour disputes commission within one month from the day he knew or should have known about the violation of his rights. The labour disputes commission may restore this term if it recognises that it was exceeded due to substantial reasons. The labour disputes commission shall examine an application within one month from after its receipt.

Now labour disputes over rights may be heard in the court, only if the labour dispute commission has heard them and if one of the

parties does not agree with its decision. The Code provides directly that the decision of the labour dispute commission is not subject of an appeal or a review – this means that the court shall settle the labour dispute substantively, without being bound by the labour dispute commission's decision. It may be applied to the court within one month from the day of the acceptance of the labour dispute commissions' decision (also, there is possibility to recover this term). The effect of the decision making process shall be sustained by the possibility to adjudicate labour dispute for several employees at the same time if dispute arises from the same grounds.

According to the valid Labour Code, if the court states that the employee was suspended from work without a valid reason or without breach of laws, the violated rights of the employee must be restored and he must recover the average wage for the entire period of involuntary idle time or the difference in the wage for the time period of being employed in a lower paid job. In the event of unlawful dismissal from work as well as in the event of unlawful suspension from work, the Project stipulates that by the decision of the body resolving the labour dispute, the employee shall be reinstated in his previous job and he must recover the average wage for the entire period of involuntary idle time or the difference in the wage for the time period of being employed in a lower paid job from the day of his dismissal or suspension from work until the day he is reinstated to his previous job, but the said average wage is limited by the duration of one year. If the employee is not restated in his previous job, besides the mentioned amounts, the employer shall pay the compensation, which amount is one average wage for each two years employment duration but no more than twelve average wages.

In case of employer's failure to execute a decision or ruling of the court or labour disputes commission and upon a request of the employee, the commission or the court shall make a ruling to recover for the employee's benefit the work pay for the entire period from the day of making of the decision (ruling) until the day of its execution, but for no longer than 6 months.

Section III. Settlement of Collective Labour Disputes over Rights

The norms of collective labour disputes' institute in the valid Labour Code are divided by the bodies responsible for their resolution: collective labour disputes shall be heard by a conciliation commission, the Labour Arbitration or at the request of one of the parties to the collective labour dispute, the collective labour dispute must be heard through a mediator. There is no separate regulation of collective labour disputes over rights and collective labour disputes over interests. Therefore, regardless of their type all collective labour disputes shall be settled in the mentioned bodies. The primary body and compulsory stadium to hear collective labour disputes is the conciliation commission where decision is made by the agreement of both parties. If the parties fail to reach an agreement, the labour dispute may be transmitted to the Labour Arbitration for further consideration (the Labour Arbitration is formed under the district court within the jurisdiction whereof the registered office of the enterprise or the party which has received the demands made in the collective dispute is located) or the conciliation procedure may be finished by drawing up a protocol of disagreement. The Labour Code lays down the alternative for the conciliation, i.e. as it was mentioned, at the request of one of the parties to the collective labour dispute, the collective labour dispute must be heard through a mediator. A mediator shall be

chosen by the parties to the collective labour dispute in the common agreement from the list of mediators approved by the Minister of Social Security and Labour (or in case of failure by the parties to reach an agreement on the appointment of a mediator, a mediator shall be selected by lot by the secretariat of the trilateral council). Not only in case of collective labour disputes over rights but also in case of collective labour disputes over interests, the strike may be declared in the event of failure to perform, or improper performance of, the decision adopted by the Conciliation Commission, Labour Arbitration, or in the event of failure to resolve a collective labour dispute through a mediator, or in the event of failure to implement the agreement reached during the mediation process.

Collective labour disputes over interests shall be settled by negotiations of parties in order to conclude collective agreements or other arrangements for the regulation of reciprocal rights and duties of social partners or for the stipulation of the norms of labour law. Firstly, the Project states that the trade union shall make demands to the employer and only if employer or employers' organisation refuses these demands or does not submit any response a collective labour dispute over interests may be initiated.

In the Project, the primary stage of the settlement of collective labour disputes over interests shall be the dispute commission established by the both parties of the collective labour dispute, which stipulates its hearing order and conditions by itself. In case of failure (to conclude the collective agreement), the dispute commission may state the dispute as not solved and refer it to the mediation or the labour arbitration for further consideration.

If the dispute is solved further by the mediation, a mediator (impartial and independent expert from the list of mediators approved by the Minister of Social Security and Labour) shall help the parties of the dispute to reconcile their interest and to achieve the mutually acceptable compromise. The mediator shall be chosen in the common agreement of the parties. If the parties do not agree on the mediator within ten working days, the mediation shall be considered as finished.

The labour arbitration shall be a non-permanent body settling collective labour disputes over rights, which is established under territorial departments of the State Labour Inspection, whereof territory the registered office of the employer or employers' organisation is located. Arbitrators shall be chosen in the common agreement of the parties from the list of arbitrators approved by the Minister of Social Security and Labour. In the Project of the Labour Code, the decision of the arbitration made by majority votes of arbitrators has a very important role, because regardless of the will of the parties, the dispute may take the obligatory decision: to recognise the made demands of the collective labour dispute as unjustified and refuse them; or recognise them as justified or partly justified and oblige the parties to conclude an arrangement or a collective agreement under conditions by the adopted decision. Such arbitration decision-making power is a novelty, because under existing law, the arbitration award is in principle not binding – employees receives the right to strike, which they already have without the arbitration process.

The Project specifies that parties of a collective labour dispute over interests may take following collective actions: representatives of employees may declare a strike and employers (employers' organisations) may organise a lockout. Representatives of employees may organise

the strike in these cases: when the dispute commission states that the dispute was not resolved or the employer (employers' organisation) does not delegate his members to the dispute commission; when the mediator states that the dispute was not resolved or was partially unresolved; when the employer (employers' organisation) do not execute the arbitration's decision. The Project stipulates the possibility to declare the lockout, which is not regulated currently. The employer (employers' organisation) may declare the lockout: when the employees' representatives do not execute the labour arbitration's decision; or when the representatives of employees declare the strike and declaration has been postponed or suspended. It should be noted, that for the first time in Lithuania the defensive employers' lockout is established – such a right is granted according to the provisions of the European Social Charter (amended).

The strike shall mean temporary suspension of work by the employees or a group of employees, by a decision of the trade union or trade unions' organisation in order to solve a collective labour dispute over interests or to ensure the execution of the decision achieved in hearing of a dispute.
Depending on its duration the strike may be the warning strike, which may not last longer than two hours and the real one.
The trade union or trade unions' organisation shall have the right to take a decision to call a strike with the procedure laid down in its regulations. Although, there is a demand that the consent of at least a quarter of the trade union members shall be received. In the event of warning strike there is no need for such consent. The employer, employers' organisation and its separate members must be given an at least three days' written notice of the warning strike in an enterprise or on a sectorial level. In the event of real strike, the notice period is at least seven days and in enterprises and sectors which are responsible for essential (vital) services, the notice period is at least fourteen days before the beginning of the strike.

The Project specifies restrictions on strikes, the course of a strike as well as the legal status of employees on strike. After the receipt of notification about a decision to call a strike from the trade union or trade unions' organisation the employer or employers' organisation shall have the right to apply to the court with a petition declaring the strike is unlawful within five days from the said receipt term. In case of an unlawful strike the losses incurred by the employer must be compensated by the trade union with its own funds and from its assets if it declared the strike.

The lockout shall mean temporary suspension of the execution of employment contracts initiated by one employer or employers' organisation, when the trade union or trade unions' organisation does not execute the agreement made during mediation procedure or the labour arbitration's decision as well as the effective court decision to declare the strike unlawful. The lockout shall be carried out in the respect of the members of the trade union or trade unions' organisation, which is the party to a collective labour dispute, or employees on strike. The lockout may be applied to no more than a half of all employees, who are members of a trade union and participate in an unlawful strike.

The lockout means suspension of the execution of employment contracts with employees for whom the lockout is applied until its end. In this case those temporarily vacant work places, the employer may employ new employees due to fix-term employment contracts to as well as to use the help of temporary employees or propose work to

other employees of the enterprise. For the duration of lockout employees, whose execution of employment contracts is suspended, are not paid (calculation of the period of service as well as service entitling to annual leave is suspended, but allowances from social insurance are retained).

After the receipt of notification from the employer about a decision to call a strike, the trade union or trade unions' organisation shall have the right within five days from the said receipt to apply to the court with a petition to declare the lockout unlawful. Upon the effective court decision to declare a lockout unlawful, the execution of employees' employment contracts shall be restored within three working days and all wages, which have not been paid from the beginning of lockout until the restoration of execution of employment contracts, shall be paid.