COLLECTIVE LABOUR RELATIONS IN DIGITAL ECONOMY: REPRESENTING THE INTERESTS OF THE "NEW WORKERS"

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Introduction

Collective labour relations are well-known and important part of modern labour relations. The right to organise and to bargain collectively with the employer has been determined by different International Agreements. The International Labour Organization (further – ILO) has adopted two fundamental conventions: convention 87 [1] and C 98 [2] that very clearly state the right for association and the right for collective bargain. The same right has also been foreseen in the European Social Charter [3] and also by the Charter of the Fundamental Rights of the European Union [4].

There are no doubts that the collective labour rights do exist and they must be respected.

The collective labour rights are granted to the employees. The collective labour relations do not function without the notion of the employees. This also means that „the collective" will be formulated by a certain number of employees, who will be able to protect their rights collectively and are granted by the right to create unions and by the right for collective bargaining

I. Employee and new forms of employment.

The new forms of employment – platform work, crowd work, telework etc. raise the important question whether there is still a possibility for the collective labour relations or not? The important question is who can by the new forms of employment form „the collective" ? There different court decisions about the status of an employee by the new forms of employment, have not clarified the status of an employee for the collective labour relations [5; 6]. As the trade unions can decide by themselves who are the members of the trade unions and who are not, the status of an employee is not the key issue.

The collective relations by the new forms of employment play an even more important role than individual employment relations. There have been already examples where the platform workers have

unionised and started to protect their rights for adequate labour conditions [7]. Also Estonia has already faced collective actions by the rideshare drivers. The important question by such collective actions is whether it is possible to qualify such collective actions as a strike? Can strikes be organised only by employees, or also by the employee-like people or self-employed? So far one can observe that the collective actions (like strikes) are mainly reserved for the employees.

Although the ILO conventions mentioned above do not exclude self-employed from the right to organise or to bargain collectively, those rights are mostly guaranteed and recognised for employees. Estonian Collective Labour Disputes Resolution Act also follows the same trend [8]. The right to collective actions is mainly guaranteed for the employees, for trade unions or the employees' trustees. So far the Estonian labour legislation does not recognise any collective labour relations for the self-employed or the employees-like people.

II. Self-employed – weaker position in bargain?

The European Committee of Social Rights had to for the first time to deal with the question, whether the self-employed can bargain collectively and to conclude a collective agreement? It can be argued, that the right for collective bargaining and right to conclude a collective agreement is guaranteed only for the employees. In case any other group of people would like to conclude an agreement about the conditions of services, this agreement could be viewed as an agreement that violates the rules of the competition law. Although the committee of social rights recognised the rights for collective barraging also for the self-employed, still it was stressed in the decision, the self-employed have a "weaker position in bargaining" [9]. What does this exactly mean and why self-employed have a weaker bargaining position was not clarified yet.

Estonian competition law does not contain any rules about the possible agreements with the self-employed [10]. The Collective Agreements' Act allows collective agreements only with employees, all other workers are excluded from the scope of application of the Collective Agreements Act [11].

To analyse whether the self-employed can conclude a "collective agreement" about the possible prices, it is necessary to observe what kind of contracts according to the competition law are allowed and whether there is an exclusion of the specific contracts determined certain employment conditions.

Thus one can see that by the collective labour relations for the self-employed two important aspects must be mentioned:

1) whether collective actions are allowed or not;

2) whether there is still the possibility to agree on general conditions of activity that's concern the self-employed persons.

According to the Estonian legislation self-employed have no possibilities to conclude a collective agreement. Although the competition law does not forbid it, at the same time the legal acts on collective labour do not foresee any special rules for the self-employed.

Conclusion

There are no doubts that the new forms of employment do exist, but it needs more legal research on how collective labour relations can be developed in the new situation. In the legal literature, there has been much discussion about the individual employment relationships and protection of self-employed in labour relations. Still, it is questionable, whether and to what extent the "new-employees" and self-employed can be guaranteed with the collective labour rights.

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