

Newsletter

I. E. A. D. E. I. L.

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LABOUR DISPUTE RESOLUTION IN THE BALTIC STATES

In 2018 in Estonia a new Labour Dispute Resolution Act (hereinafter TVS) entered into force, replacing the former outdated law (hereinafter ITVS) that was in force from 1996 until 2017. Whereas ITVS was unevenly balanced between administrative and civil procedure, the new law is strongly positioned within the framework of the civil court procedure. This Newsletter is outlining the proceedings while focusing on the more important changes and also providing a comparison with the Latvian and Lithuanian law on labour dispute resolution.

LABOUR DISPUTE COMMITTEE

TVS regulates the establishment and rules of procedure for labour dispute committees (hereinafter committee) and the extrajudicial procedure for resolution of labour disputes. A committee is formed by a chairman who is a professional lawyer and two assessors who are appointed to the committee by the representative bodies of both employers and employees. The committee is formed on the same principles in Lithuania, whereas in Latvia the type (labour dispute committee or conciliation committee) and constitution of the committee depends on the type of dispute. Also, in Latvia there are no professional requirements for the members of committees.

COMMITTEE VS COURT

In Estonia it is not obligatory to turn to labour dispute committee in order to initiate labour law proceedings. All the claims can be lodged in the committee as well as in civil court. In Lithuania it is mandatory to bring almost all disputes to the committee. However, parties can also agree to bring the dispute to the commercial arbitration. In Latvia individual disputes regarding rights can be resolved both in labour dispute committee and in

civil court. Additionally, Latvian law provides the types of individual disputes regarding rights, which should be resolved directly in court. Collective disputes on rights can be brought to court only in cases specified by the law, but parties can also agree to initiate an arbitration proceeding.

ADVANTAGES OF COMMITTEE

Labour dispute proceedings have certain advantages over court proceedings. Firstly, state fee is not applicable (similarly to Latvia and Lithuania). Secondly, the proceedings take only 45 days in Estonia; starting from 13 days in Latvia, depending on type of the dispute; and in Lithuania within one month at the latest (this term can be extended by an additional month). Thirdly, in case of a loss, there is no obligation to reimburse the legal expenses of the opposite party (although if the case proceeds into civil court, the costs occurred in the committee will be considered reimbursable in Estonia, but not in Latvia or Lithuania). In Latvia an employer has to cover the costs of labour dispute committee (solving individual disputes regarding rights), unless otherwise agreed by the parties.

In Estonia the proceedings are less formal, providing access to the procedure also to the parties that are not well experienced in legal matters and court proceedings. In Latvia, legal education is not expected even from the members of the committee. This lack of formality was one of the major flaws of the previous regulation. Whereas proceedings were flexible, it was unclear how to present evidences, file requests or complaints, or how proceedings could be joined or severed. The practice between different committees varied significantly and in some cases the possibility for such actions was altogether denied.

Such critical issues have now been regulated with a notion that any and all procedural issues that might arise and are not governed by TVS, shall be governed by the Code of Civil Procedure. Lithuanian law provides only certain cases where the procedural issues that are not governed by the Labour Code shall be governed by the Code of Civil Procedure. Regarding Latvia, the law does not provide detailed procedural regulation. In Estonia this more or less self-evident regulation was sorely lacking from ITVS. Yet, burden of proof is still a rather unspecified topic in the Estonian law.

Although the Labour Inspectorate is quoting on their website that the procedure is adversarial (i.e. based on the competition of equal parties who have equal rights in submitting evidence; the same principle applies in Lithuania), then according to TVS the committee actually has both the right and the obligation to collect evidence on its own regardless of what the parties have submitted. It remains to be seen how this conflict will be played out in future proceedings and which solution will be adopted.

disputes regarding recognition of employment termination notice as void, unpaid salary, etc. The Estonian law allows also collective labour disputes to be resolved by the labour dispute committee, whereas in Latvia such disputes are conducted by conciliation committee. In Lithuania only collective disputes on rights are resolved by the committee.

	EST	LV	LT
Duration of proceedings	45 days	20 days for individual disputes, from 13 days for collective disputes (can be extended)	30 days (can be extended by another month)
Upper limit on claims	None	None	None
Reimbursement of costs	By the losing party, but only if the case is taken to civil court	Costs of labour dispute committee by employer, unless otherwise agreed	Never
State fee	Not applicable	Not applicable	Not applicable

The scope of TVS has also been extended. Whereas ITVS allowed only disputes arising from employment contracts, TVS allows all disputes arising from employment relationships to be resolved by the committee, e.g. in addition to contractual issues also problems arising from public law, disputes of workplace conditions, health regulations etc. It is similar in Latvia and Lithuania.

UPPER LIMIT OF CLAIMS

While ITVS stipulated the upper limit of 10 000 Euro for claims, TVS does not provide such limitations since the complexity of a claim is rarely dependant on the amount of the claim. Neither Latvian nor Lithuanian laws stipulate the upper limits to a claim. Nonetheless, in Estonia claims that are lower than 6400 Euro (statistically the majority of claims) can be resolved in written proceedings by the chairman of the committee unless a hearing is requested by a party.

Written proceedings were not an option under the ITVS and the committee had to convene for any claim. Generally in Lithuania all disputes are resolved at the hearing. However, if a defendant agrees with the claims of a claimant, the dispute can be resolved in a written proceeding. In Latvia all disputes are solved at the hearing.

CONCILIATION PROCEEDINGS

In Estonia the committee has an obligation to assist the parties in possible reconciliation. There is a new option of conciliation proceedings aimed at reaching an agreement suitable for both parties.

Claims of any size can be lodged in the labour dispute committee

As a noteworthy exception, disputes over the compensation of damages to health, a bodily injury or death due to an occupational accident or occupational disease are not covered by TVS and such claims need to be lodged in civil court. In Lithuania only claims over the compensation of damage caused by death are lodged to court. As already mentioned, Latvian law provides the types of individual disputes regarding rights, which should be solved directly in court, for example,

Whereas settlements were often made under ITVS as well, it was not specifically allowed, meaning that the parties had to settle outside of the proceedings and agreements could not be enforced in enforcement proceedings. Now a settlement that has been confirmed by the committee is for any practical purposes equal to a court judgment.

SUMMARY

As a result of enforcement of the Labour Dispute Resolution Act, the quality of proceedings in Estonia should improve for two reasons:

- Firstly, requirements regarding the education and capacities for a chairman and two assessors of the committee have now been established by law. Furthermore, the suitability for office (including the knowledge of labour law and the conduct of labour dispute proceedings) of the chairman of the labour dispute committee will be periodically assessed. This regulation is unique in Estonian law as judges are not subject to periodical assessment.

Chairman of labour dispute committee is periodically assessed in Estonia



- Secondly, the procedure has been extended. ITVS stipulated that a case must be closed within 30 days; now the term is 45 days as the shorter period drastically lowered the quality of proceedings as well as judgments.

If a party does not agree with the committee's judgment then instead of challenging it, the party has a right to apply for civil court to resolve the case as if it was initially submitted to a civil court. The same right is ensured to parties of individual disputes on rights in Latvia. The application practice of the new TVS is already gathering momentum based on the very first cases that have been resolved by the Estonian civil court where the committee judgments have been disputed.