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Krassimira Sredkova
St. Kliment Ohridski University, Bulgaria
https://orcid.org/0000-0003-0716-3438

EU law and problems of the codification of the Bulgarian labour legislation

Summary

Based on historical experience, in Bulgarian labour legislation, in recent years the problem of the state of its codification has become more and more pronounced. This condition is alarming. In the presence of a reasonable, comprehensive code, laws are being constantly adopted on separate issues that either do not regulate anything specific, or repeat provisions of the Labour Code. Furthermore, the body of by-laws keeps expanding uncontrollably. Most often this is explained by some requirements of EU law, new socio-economic conditions, etc., while in fact this expansion is due to inadequate expertise of the law-making bodies, interference of non-legal considerations, etc. This creates many difficulties in understanding and applying labour legislation.

Keywords: code, normative act, legal norm, law, EU requirements, employment relationships

1. There is hardly a more universal problem in the modern complex and dynamic world than the problem of human labour as the main socio-economic factor, the main means of achieving the social security of citizens and the main criterion for the place of the person in society. Therefore, the legal regulation of employment relationships must occupy a central place in any national policy. This policy in Bulgaria began after the Liberation from Turkish yoke. Since then, Bulgarian labour legislation has developed a rich and interesting history with some ups and downs. A number of our distinguished researchers have devoted their efforts to the study and presentation of this history. These are Raiko Oshanov[1], Prof. Iliya Yanulov[2], Prof. Lyubomir

[1] See Р. Ошанов: *Правната закрила на труда в България*. София 1943.

[2] See *Ил.* Янулов: *Трудово право*. София 1946; от него: *Трудово право и социално законодателство*. София 1946.

Radoilski[3], Yordan Zlatinchev[4], Prof. Vasil Mruchkov[5]. Here I will mention a thought by Prof. Iliya Yanulov made to the Director–General of the International Labour Office Albert Thomas in 1929: "If social law is to constitute a permanent reform in order to meet the requirements of economic and social evolution, it must pay its tribute to the competence, i.e. to the science"[6].

And thus, on 1st and 2nd April, 1986, the Labour Code (LC) was promulgated, which entered into force on 1st January, 1987. It is evident that the period of preparation for its entry into force was not so short. During this period, employers and trade unions were preparing for its implementation, many information events were held to explain it, etc.

As the name of the law indicates, it is a code. This means that according to Article 4, para. 1 LNA (Law on Normative Acts) it should regulate "public relationships, that are the subject of an entire branch of the legal system or of a separate part of it". Indeed, when it was adopted, the Labour Code regulated the employment relationships between the employee and the employer, as well as other relationships immediately associated with them (Article 1, para. 1 LC). The specific characteristic of its subject of regulation – the relationships when performing human labour – no matter how much it is influenced by political systems and ideologies, is connected with universal values such as health, work capacity and dignity of the working person. Issues such as working time, breaks and leaves, health and safety at work, labour discipline, etc. are of universal character. In this area, Bulgarian legislative decisions are in line with, and often exceed, established international and supranational European standards.

In 1992, 1995, 2000, 2004, 2009, serious amendments were introduced into the Labour Code, required by the objective conditions during the transition of the society to a system of market relationships, and also

[3] See *Л.* Радоилски: *Трудово право. Историческо развитие*. С.: Наука и изкуство 1957.

[4] See Й. Златинчев: *Борбата за трудово законодателство в България 1878–1944*. София: Наука и изкуство 1962.

[5] See В. Мръчков: *Развитие на трудовото право*. – В: *Развитие на социалистическото право в България*. С.: Наука и изкуство 1984, pp. 280–309; от него: *Новият Кодекс на труда и развитието на трудовото право*. Правна мисъл 1986, № 4, pp. 19–34.

[6] Ил. Янулов: *Международно трудово право*. С.: Държавно висше училище за финансови и административни науки 1945, p. 70.

the preparation and subsequent accession of Bulgaria into the European Union (EU). I am not mentioning here all the dozens of amendments and additions. Some of the amendments were justified by the practice, others caused serious problems. New needs are emerging. They can be satisfied through serious amendments while preserving the established and progressive solutions of the current Labour Code. I shall not dwell on this because it exceeds the main topic of my article. I just wish to emphasize that I strongly reject the idea postulated by some employer- and trade union organizations about the need for a new Labour Code. This will not improve the legal system. Our society has not yet built a robust economic system, it is still wandering, looking for the optimal ways for its development. Moreover, it is also not clear what in the current basic regulation of labour relationships is not satisfactory.

2. In any case, the necessary amendments should not lead to breaking the codification of labour legislation, as we have witnessed in recent years. This is evidenced by the multitude of laws that regulate various elements of labour relationships – the Guaranteed Receivables Act, the Health and Safety at Work Act, the Law on Labour Inspection, the Law on Labour Migration and Labour Mobility, the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies, the Employment Promotion Act, the Collective Labour Dispute Settlement Act. To these we must add laws defined as general, but in the main part "regulating" issues of labour relationships – the Anti-discrimination Act, the Law on Equal Opportunities for Women and Men, the Vocational Education and Training Act, etc.

3. The adoption of these laws, as well as of a number of supposed amendments, which in fact were repetitions of regulations from the very Labour Code, was justified by the legislature by a number of reasons. Most often, one of them was the need **to transpose EU law**.

a) The EU law is very often used to argue for otherwise unfounded draft laws. The main problem lies in the failure to understand the substance of implementing the requirements of the EU secondary law into the national legal systems. The legislature did not take into account that the directive (such are the acts transposed with the latest amendments to the Labour Code) sets out only a mandatory ***result*** to be achieved – for example, providing the information

necessary for work under an employment relationship, equal treatment of employees on fixed-term employment relationships and employment relationships of indefinite duration, etc. How to achieve this result is a matter of national legal system, national tradition, specific characteristics of national legislation and practice[7]. Verbatim copying of the directive (and often in an inaccurate translation) is not implementing. In addition, the national legislature should take into account that the directives (as well as other EU acts) are aimed at many countries, with different national legal systems, with different legislative solutions and terminology, therefore their wording is more general and flexible. Directives are usually drafted on specific issues, therefore their transposition into general national acts, especially of a codification nature, must make sure that the specific regulation complies with the general idea of the law. We do not find anything like that in the latest amendments to the Labour Code. That is why the problems created by the amendments "justified" by European requirements deserve special attention[8].

In a number of cases, the explanatory notes to a certain Bulgarian draft law are exhausted by the fact that it is introduced in fulfilment of EU requirements for a separate law, without specifying what these requirements are and in which act they are established; there are also cases (for example The Law on Equal Opportunities for Women and Men, introduced by the Council of Ministers in 2006), where those who introduced draft laws mislead the members of the Parliament and the entire legal community, since there were no requirements for a separate law in the relevant area neither in the primary nor in the secondary EU law.

[7] See Орл. Борисов: *Същност и развитие на правото на Европейската общност*. Съвременно право 1992, № 5, pp. 37–43; Ж. Минков: *За въвеждането на европейските социални норми в българското законодателство и практика*. Международни отношения 2001, № 4, pp. 23–42; W.Weidenfeld,W. Wessels (Hrsg.): *Europa von A—Z. Taschenbuch der europäischen Integration*. Europa Union Verlag GmbH, Bonn 1995; Fr. Emmert: *Europarecht*. Verlag C. H. Beck, München 1996; H. G. Fischer: *Europarecht*. 3. Aufl. München 1996; D. Schiek: *Europäisches Arbeitsrecht*. Nomosverlagsgesellschaft, Baden-Baden 1997; R. Blanpain: *European Labour Law*. 6th ed. Kluwer Law International, The Hague-London-Boston 1999; Chr. König, Andr. Haratsch: *Europarecht*. 4. Aufl. Tübingen 2003; J. Marlberg (Ed.): *Effective Enforcement of EC Labour Law*. Uppsala 2003.

[8] I will not dwell here on the enormous common legal-technical shortcomings and inexpedient legal decisions. They deserve a special study.

The general declaration that "all developed European countries" have such a law, which in most cases is not true, also cannot justify the need to adopt a separate law in our country, if the relationships in the Bulgarian society and the way of their regulation do not suggest a need of its adoption. It is difficult to find legal arguments for the need for a separate Law on Equal Opportunities for Women and Men in the presence of the constitutional norm of Article 6, para. 2 of the Constitution of the Republic of Bulgaria (Const.), the general Law on Protection from Discrimination and the special norm of Article 8, para. 3 LC, which stipulates "in the course of exercise of labour rights and duties no direct or indirect discrimination on grounds of... gender, sexual orientation" shall be allowed. For these reasons, in 2006, the Advisory Council on Legislation to the President of the National Assembly rejected the submitted draft law, however, in 2016 there was no longer such a council, but there was such a law;

b) ***The effect of EU law*** is not known.

Bulgaria still does not take into account the fact that EU regulations have a direct effect, and some regulations are being incorporated into the Bulgarian legislation with no need for that. Article 15, para. 2 LNA even explicitly established this direct effect of the regulations and their precedence over domestic law. Therefore, even if it is not stated, for example, in the Employment Promotion Act, that nationals of EU Member States are hired under the same conditions as those for Bulgarian nationals, this rule shall be applied by virtue of Regulation (EU) No 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union;

c) ***The substance of the legal framework in the EU acts*** is not known.

Instead of carrying out the spirit of the European act in accordance with the Bulgarian legal system and traditions, very often EU directives are copied verbatim from an inaccurate translation. The literal copying of the directives underestimates the national tradition and its achievements. Very often, this leads to a departure from legal solutions traditional for Bulgaria, without this being required by EU law. Typical examples in this regard are the laws amending

and supplementing the Labour Code of 2004, 2006, 2016; the Vocational Education and Training Act, etc.

When copying the directives literally and including them in the Labour Code, the Bulgarian legislature did not consider that they were introducing these into a codification act for the general regulation of labour relationships. For example, Article 8, para. 3 LC sets out the principle of equal treatment of employees and lists the grounds on which different treatment in labour relationships is not allowed. Article 8 may be found in Chapter One "General Provisions". According to the basic rules of legislative technique, this means that the provisions of this chapter are applied in all institutes of labour law, regulated further in the Labour Code. For our legislature, however, this has turned out to be insufficient for presenting it in a "European mode". They probably considered that Article 8, para. 3 LC, which does not allow direct or indirect discrimination based on "differences in the contract term and the duration of working time" will not be read, so they have decided just in case in Article 68, para. 2, ex. 1 LC to state again that "employees employed under a fixed-term employment contract shall have the same rights and obligations as the employees employed under an employment contract of an indefinite duration". The situation is similar with Article 138, para. 3 LC on the equal rights and obligations of part-time employees and those with statutory working time. In the presence of the general provision of Article 8, para. 3 LC that "in the course of exercise of labour rights and duties no direct or indirect discrimination shall be allowed on grounds of... the duration of working time" Article 138, para. 3 LC repeats that "the employees under para. 1 (part-time employees – *note Kr. Sr.)* may not be placed at a disadvantage solely due to the part-time duration of working time thereof compared to the employees who are party to a full-time employment contract and who perform the same or similar work at the enterprise. The said employees shall enjoy the same rights and shall have the same duties as the employees working on a full-time basis…". This – only because Article 6 of the Framework Agreement on part-time work, approved by Council Directive 97/81/EC, requires equal treatment of part-time and full-time employees. However, our legislature did not take into account that the European document is aimed at all EU Member States, and they have different legal systems – in Ger-

many, for example, labour legislation is not codified and this requirement must be included in the relevant special legal act on working time, while our legislation is codified and contains a general provision prohibiting discrimination, including on the basis of the duration of working time.

Unnecessary repetitions are also contained in Article 287 LC, which provides that "all employees shall be subject to mandatory periodical medical examinations" (para. 1), which are at the expense of the employer (Article 287, para. 2 LC). Article 140a, para. 3 LC repeats this specifically for employees who perform night work – as if they are not part of all employees within the meaning of Article 287, para. 1 LC. It is true that the relevant EU directive provides for such a requirement for night employees, but the Bulgarian legislature did not consider that the directive refers only to night work, while our law sets out a general requirement.

There are more than just one or two examples. Such an accumulation of provisions with the same content in the same normative act, in addition to contradicting the Decree No. 886 on Implementing the Law on Normative Acts (DILNA) (according to Article 38 of the said decree "the rule of conduct shall be worded in one article"), creates difficulties for the addressees and makes them look for differences in the provisions that do not exist, and creates a false impression that it is necessary to engage in some particularly strong fight against some non-existent negative trends.

The literal copying also results in contradictions between the Bulgarian and the European legal solutions. This concerns, for example, another amendment to the Health and Safety at Work Act of 2006. By mixing up the subject matter of the law and the principles of state policy in the field of health and safety at work, by narrowing the scope of the Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work and other normative decisions, this law did not at all ensure "full compliance", as claimed in the explanatory notes to the draft law, with the requirements of the directive. Not to mention that it is a framework directive and does not set any specific requirements, and for its implementation 20 specific directives have been adopted, which have been introduced into the Bulgarian legal system with by-laws.

Even absurd legislative decisions have been reached in the not thought-through transposition of some provisions of the EU law. A typical example of this is the amended in 2006 provision of Article 123 LC and the new provision of Article 123a LC, which refer to a change of employer in the event of organisational changes, changes in the ownership of the enterprise or in the manner of its use. The amendment to the Labour Code introduced the terms "employer–transferor" and "employer–transferee", not taking into account the circumstance, that employees are living persons and not property objects to be "transferred". Even in Article 2, para. 1, letters "a–b" Directive 2001/03/EC, which the Bulgarian legislature tried to implement, the terms "employer–transferor"/"employer–transferee" are not used, there are "transferor"/"transferee" (i.e. parties to the transaction, not to the employment).

No less problematic is the regulation of information provision and consultation with employees, which will be specifically discussed below. Instead of systematizing the legal framework, the Labour Code dedicated more than 20 provisions to the right to information (for example, Article 7a; Article 7c–7d; Article 52, para. 1, etc.). This would be an acceptable approach if the right to information was regulated in each institute with which it is associated. However, it is not so and it should not be so in a codification law. Having previously established special rules in numerous provisions, the legislature suddenly formed Section II in Chapter VI of the Labour Code, titled "Common Rules for Information and Consultation", then again in different places (for example, Article 138a, para. 3, item 3; Article 140, para. 5, etc. LC) we are facing rules regarding informing employees on various issues. Thus, the requirement of Article 30, para. 1 DILNA that the general provisions of the normative act precede the specific ones, is violated. Such a legislative approach is not only a formal violation of the rules for the construction of normative acts, but it also creates difficulties in the application of the relevant rules.

4. Although the legislature repeatedly reiterates the requirement for the inadmissibility of differences in rights and obligations based on the employment contract term and the duration of working time, the legal acts themselves have introduced such differences and thus created contradictions with the principles proclaimed by themselves in Article 8, para. 3, Article 68, para. 2, sentence 1 and Article 138, para. 2 LC.

Article 68, para. 2, sentence 2 LC provides that employees under fixed-term employment contracts "may not be treated in a less favourable manner than comparable permanent employees … solely because of the fixed-term nature of the employment relationship thereof" (which in itself is essentially a repetition of the previous sentence). However, the legislature did not consider the fact that also a treatment in a "more favourable manner" is a violation of the principle of equality as well, at least because it constitutes a difference. According to Article 1, item 1, "a" of the ILO Discrimination (Employment and Occupation) Convention (which is part of the domestic law under the conditions of Article 5, para. 4 Const.), the term "discrimination" includes "any distinction, exclusion or preference", while sentence 2 of the new para. 2 of Article 68 LC does not exclude "preference". On the contrary – it explicitly encourages it. Article 68, para. 7 LC requires an employer "to take measures to facilitate access by fixed-term employees to vocational training for the purpose of enhancing their skills and career development". Not only does Article 68, para. 7 LC thus establish an inadmissible preference based on the contract term and discriminates against employees under employment contract of an indefinite duration; this provision has also no social justification. On the one hand, it introduces an unexplainable presumption of lower qualifications for employees under a fixed-term employment contract. On the other hand, it burdens the employer with unjustified financial and other costs. Why should the employer take care of their qualifications and not of the qualifications of the other employees? Again, formally referring to an EU directive (which is aimed at different countries with different legal regulations on fixed-term employment contracts), the Bulgarian legislature did not consider that the very grounds for concluding a fixed-term employment contract under Article 68, para. 3 LC (temporary work, seasonal work, short-term work, work in enterprises declared bankrupt or in liquidation) exclude any interest of the employer in the special care for the qualification of employees under these employment contracts.

The situation is similar with part-time employees (Articles 138–138a LC), for whom special rights and therefore corresponding obligations of the employer are provided for taking special care of their vocational training and career development, as if they were some kind of "more valuable category" of employees than full-time employees.

By the way, when it comes to working time, it should be pointed out that there are also a number of other unacceptable legislative decisions based on the requirements of EU law. Due to volume limitations, only some of them will be highlighted in this study.

Article 113, para. 2–3 LC established a requirement for the written consent of the employee under an employment contract for additional work, to work for a longer duration of time so that, together with the duration of the work under the main employment relationship, they do not exceed the established in Article 113, para. 1 LC limits. These provisions are unnecessary in the first place because they without any need reproduce provisions of the EU law. Their reproduction is unnecessary, since an employment contract for additional work (like any employment contract) cannot be concluded without the consent of the employee. The employee must express their will on the required minimum elements of the agreed content of the employment contract, among which is the working time duration (Article 66, para. 1, item 8 LC)[9]. Therefore, the extensive and unclear rules concerning the consent on working time specifically under the employment contract for additional work are simply redundant.

However, this is not the only drawback of Article 113, para. 2–3 LC. Caught up in copying provisions from the EU acts, the Bulgarian legislature failed to read these acts to the end. Otherwise, they would have noticed that Directive 2003/88/EC provides for the possibility of increasing the maximum duration of working time not only based on the written consent of the employee (Article 22, para. 1, "a"), but also in some statutory cases (Article 17, para. 1). Our legislature does not provide for the second hypothesis. They also do not provide for the requirement of Article 22, para. 1, "a" of the directive for the employee's consent to be given in advance.

A failure to understand the content of the European act is also evident in Article 113, para. 7 LC. This provision allows the Labour Inspectorate to prohibit or altogether restrict the possibility of exceeding the weekly duration of working time. Such an authority is granted to the Inspection in Article 22, "d" Directive 2003/88/EC, but only with regard to the maximum, and not the normal duration of working time.

[9] For the minimum necessary content of the employment contract and the lack of possibility of concluding it without mutual agreement on these elements, see В. Мръчков: *Коментар на Кодекса на труда.* Сиби, София 2021, pp. 217–224.

5. The legal regulation of **informing and consulting employees** deserves special attention. This question is extremely important in its own right. It is an expression of the new attitude towards the employee not only as a workforce holder, but also as a multifaceted human being and an active participant in the work process for the prosperity of the employer[10]. So far, the Labour Code also contained some rules in this area (e.g., Article 52, Article 130, etc.). The employer was assigned the obligation to provide certain information relevant to the employment relationships at concluding collective labour agreements, upon entry into employment, at amending the employment relationship, etc. The amendments in recent years have expanded the subject matter and the addressees of this information (not always justified).

First of all, ***the subject matter*** of the information that the employer owes has been expanded. Now it covers a number of issues of the individual and collective labour relationships – the obligations of employees under individual employment relationships; the consequences of any modification of the employment relationship; issues of employer's restructuring; issues of mass dismissals, etc. This is good. However, the regulation of these issues is not good. Below are some examples.

In the first place, the structure of the regulation is not good. Instead of systematizing the legal framework, the Labour Code dedicated more than 20 provisions to the right to information (Article 7a; Article 7c–7d; Article 52, para. 1; Article 62, para. 5; Article 66, para. 4; Article 68, para. 6, etc.). This would be an acceptable legislative approach if the right to information was regulated for each legal institute it is associated with. However, it is not so. Having previously established special rules for information in numerous provisions, the legislature suddenly created a special Section II in Chapter VI, titled "Common Rules for Information and Consultation". Then again in different places (for example, Article 138a, para. 3, item 3; Article 140, para. 5, etc. LC) we are facing rules on informing the employees on various issues. Thus, the requirement of Article 30, para. 1 DILNA that the general provisions of the normative act precede the specific ones, is violated. Such a legislative approach is not only a formal violation of the rules for the

[10] On these issues see Кр. Средкова: *Правото на работника на информация*. Държава и право 1989, № 7, pp. 59–67; В. Мръчков – In: *Коментар на Кодекса на труда*. 13. изд. С.: Сиби 2021, pp. 410–430.

construction of normative acts, but it may also create difficulties in the application of the relevant rules. These difficulties will be enhanced by yet another unfounded and unexplainable legal decision – the addressees of the due information.

There are also problems in the subject matter of the due information. For example, the new item 6 in para. 1 of Article 127 LC, introduced by the latest amendment to the Labour Code dated 05.08.2022, established the employer's obligation to provide information to the employee "about the terms and conditions for terminating the employment contract in compliance with the provisions of this Code", again motivated by the requirement of EU Directive (2019/1152). However, it is not clear why the employer will provide this information – the Bulgarian legislation has laid down explicitly and comprehensively (Articles 325–335 LC) the terms and conditions for termination of the employment contract. Does this mean that the employer must read Articles 325–335 LC to the employee?

One of the main, hard-to-overcome shortcomings of the law is precisely in relation to ***the addressees of the due information***. These addressees are of five categories: the individual employee (for example, Article 62, para. 5; Article 66, para. 4; Article 68, para. 6, etc. LC); the employees' representatives (for example, Article 7c; Article 130–130c, etc. LC); trade union organisations (for example, Article 52, para. 1; Article 130–130b, etc. LC); the Labour Inspectorate (for example, Article 113, para. 8 LC); all employees (Article 58 LC). While the first and last two categories of information addressees raise fewer problems, things are not like that with the second and third. In the explanatory notes to a number of amendments and additions to the Labour Code, it is stated that they implement in the domestic law the requirements of several EU directives (91/533/EEC; 98/59/EEC; 2001/23/EC, etc.) which establish rules for informing and consulting employees on certain issues. This is correct. However, none of the afore-mentioned EU acts requires that the information and consultations on the specified issues be conducted with a separate category of representatives and that, apart from them, there should also be an independent category of representatives for general information and consultation. Now, the new Article 7a LC provides for special employees' representatives – for information and consultation in the

cases of 130c and 130d LC[11]. According to Article 2, "e" Directive 2002/14/EC, however, in information and consultation procedures there may participate employees' representatives provided for by national laws and/or practices; no special category of such representatives is required. Thus, the new Article 7a LC creates an extremely complex and confusing system of employees' representation, composed of: 1/ the General Assembly of Employees (Article 6, para. 1 LC); 2/ the meeting of proxies (Article 6, para. 2 LC); 3/ representatives for participation in the enterprise management (Article 7, para. 1 LC); 4/ representatives for the protection of the common interests of employees (Article 7, para. 2 LC); 5/ representatives for informing and consulting employees (Article 7a LC); 6/ trade union organisations. A seventh group of representatives was added to the above six – in European companies or European Cooperative Societies according to a separate law (the Law on Information and Consultation with Employees of Multinational (Community-Scale) Undertakings, Groups of Undertakings and Companies).

The functions of these different categories of representatives are neither clearly defined nor precisely distinguished. This will inevitably give rise in practice to disputes about the legitimacy of the respective representatives. It will be extremely difficult for the employer to determine when to inform whom about what. At the same time, it is not at all clear what the ratio is between the general (according to Article 7 LC) and special (according to Article 7a LC) representatives. In the absence of traditions in employees' representation in Bulgaria, it is a total confusion. This unnecessary complication, incorrectly reasoned by some requirements of Directive 2002/14/EC (no such are set out therein), can practically block the reasonable idea of representation. No one considers expelling from the EU, for example, Germany, where the employer informs and consults the works council on all issues (the staff council in the institution), and the works council expresses an opinion on all issues.

Faithful to the idea of overtaking even the best, in Bulgaria we transposed the directive in yet another aspect. According to Article 3, para.

[11] I am not discussing the other inaccuracy here – that Article 7a, para. 1 LC refers to informing "under Article 130c and Article 130d", while Article 130d LC does not regulate any special information, but deadlines for providing the information.

1 Directive 2002/14/EC, the information and consultation procedures established therein apply to undertakings employing at least 50 employees, or establishments employing at least 20 employees in any one Member State. For us however, it is not important. We introduce them indiscriminately – in a small enterprise with 10–15 employees as well. A situation will arise in which the total number of employees will be less than the number of their representatives required by the Labour Code.

In addition, on the substance of information and consultation, there are many legally illogical legislative decisions motivated by the EU requirements. Thus, for example, the legislature justifies by a requirement of Directive 1999/70/EC what is provided for in Article 68, para. 6 LC – employer's obligation to inform employees under fixed-term employment relationships about vacant jobs and positions which can be occupied under an employment contract of indefinite duration. Article 6, para. 1, ex. 2 of the directive, provides as an alternative way of making the information available, the placing of this information by way of a general announcement at a suitable place in the undertaking or establishment. This not only does not exclude, but also implies individual notification as well. Our legislature, however, regulates it as the only admissible way, along with the notification of the trade unions and the employees' representatives. In addition, there is not a word about the individual employees for whom this information is of direct interest.

Let us consider another example. To put it mildly, "strange" is the provision of Article 66, para. 5 LC, which stipulates that "upon any change in the employment relationship, the employer shall be obligated, at the earliest opportunity and not later than one month after the entry into effect of the change, to provide the employee with the necessary information in writing containing details of the changes as effected". Apart from the fact that, as a rule, related to a change in the employment relationship, its systematic place in the provision regarding the content of the employment contract is controversial, Article 66, para. 5 LC also raises other questions to which it is difficult to find reasonable answers. This paragraph is a verbatim translation of the EU directives, but does not take into account that it is meaningless in many cases of modification of the employment relationship, such as:

a) When the modification is *pursuant to changes in the legislation or the collective labour agreement*. These cases are expressly excluded from the scope of the employer's obligation in Article 5, para. 2 Directive 91/533/EEC, but not by the Bulgarian legislature;
b) When the employee is seconded *to work abroad*. These cases are also excluded from the scope of the general obligation under Article 5, para. 2 Directive 91/533/EEC. However, they are subject to special regulation in Article 127, para. 4 LC;
c) When the modification is done by *mutual consent* of the parties to the employment relationship (Article 119 LC). It is pointless for the employee to be informed about changes, the implementation of which took place based on his/her will.

It should also be stated that the due information relates to the effects of the modification and not to the modification itself. The data on the modification are contained in the very act, by virtue that it is carried out – for example: "On the basis of Article 120, para. 1 LC I hereby assign to … due to idling, to work as … while the idling lasts". I do not comment here on the linguistic nonsense – "information containing data". Any information is a collection of data.

6. Continuing the vicious trend of unreasonably copying the EU acts without considering the Bulgarian conditions in the amendments to the Labour Code since July 2006, the Bulgarian legislature has allowed other unexplainable legal decisions. Among them is the establishment of unnecessary and inaccurate rules.

Faithful to their idea of verbosity, the legislature underestimates the fact that the authorities implementing the Labour Code are not students, and explains to them that in the case of part-time work "the monthly duration of the working time… shall be less compared to the monthly duration of the working time of the employees who work under a full-time employment relationship at the same enterprise and perform the same or similar work" (Article 138, para. 2 LC). At the same time, the explanation is also inaccurate – how will it be assessed whether the working time is part-time if there are no employees in the enterprise who perform the same or similar work on a full-time basis? The problem shall not be solved by another verbiage and explanation typical for a textbook, and not for a normative act.

Misunderstandings may also be caused by Article 138a, para. 3 LC. It is a literal translation of Article 5, sent. 3, "a–e" from the Annex to Article 1 of Directive 97/81/EC. In the current Bulgarian legislation, there was no obstacle to the transfer from a full-time to a part-time work – the working time duration specified in the employment contract can be modified at any time without any restrictions by mutual consent of the parties to the employment relationship (Article 119 LC). However, it is inadmissible to oblige the employer to transfer part-time employees to full-time positions, even if there are vacancies. In this situation, the rules established in Article 138, para. 3 LC do not have a normative, but only a recommendatory content and therefore have no place in a normative act, especially a code. Failure to comply with these rules cannot be backed by any sanctioning consequences. In addition, many of these recommendations are unclear – what does it mean, for example, for the employer to "give consideration to the requests of employees"?

7. Unfortunately, the process of de-codification of the Bulgarian labour law also manifests itself in the adoption of completely **unfounded** (even by the usual argument – EU law) **laws**.

A typical example is ***the Labour Inspection Act*** of 2008. I am fully convinced that this is one of the most senseless acts of the 40th National Assembly. First of all, I do not find any need for this law – the requirement of Article 3, para. 1 LNA for a specific circle of social relationships to be regulated in a specific way is missing. What the law inaccurately names "labour inspection" and what is actually missing from its content is the control for compliance with the labour law – relationships directly related to industrial relationships within the meaning of Article 1, para. 1 *in fine* LC and logically regulated in Chapter XIX LC. They are not independent, but exist in parallel with industrial relationships in a narrow sense – the relationships between employees and employers in the immediate provision, respectively use of workforce. Moreover, this law does not regulate anything specific, but general principles of the operation of ministries and other government institutions, which, however, are regulated in the rules of procedure of the relevant authorities.

Another example is ***the Law on Labour Migration and Labour Mobility.*** There is no reasonable explanation as to why, in the presence

of a specific chapter in the Employment Promotion Act regarding the employment of persons who are not Bulgarian nationals, this chapter was repealed and a separate verbose law was adopted in its place, and also accompanied by implementing regulations.

I will not dwell here on the numerous by-laws. In a number of cases, they repeat the legal framework, but what is worse, they exceed the delegation that is granted to them. Thus, labour law keeps endlessly growing and growing. But not its effectiveness.

8. On other occasions I have also written with concern about legislative misunderstandings in the field of labour legislation. And every time I have hoped that there cannot be an even stranger legislative technique and legislative approach. Each time I have been made sure that my hope was in vain. This is also the case with the latest amendments and additions to the Labour Code this year. The concern here is even more justified because of the wide range of addressees of the legal regulation and because of its purpose to regulate the daily life of the working person – his/her life at work. Such a regulation does not contribute to raising the profile of the legislation and improving its compliance (which, however, is also hampered by the quality of the legal regulation). It is more than necessary for the legislature to rethink their practice and move toward creation of a truly necessary, socially justified and properly legally and technically supported policy in the field of labour. In particular, in connection with the implementation of EU acts in domestic law, it should be emphasized again that it cannot be successful through literal, sometimes inaccurate copying of European act into Bulgarian law, but it should be made in compliance with the specific characteristics of the Bulgarian legal tradition, legal system and the Bulgarian common and legal language.

There are probably similar problems in the legislations of other EU Member States. It would be useful to discuss them and jointly look for ways to overcome them.

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Prawo UE a problemy kodyfikacji bułgarskiego prawa pracy

Streszczenie

Opierając się na doświadczeniach historycznych, w bułgarskim ustawodawstwie pracy w ostatnich latach coraz wyraźniej zaznacza się problem stopnia jego kodyfikacji. Stan ten jest niepokojący. Wobec braku sensownego, kompleksowego kodeksu stale przyjmowane są ustawy dotyczące odrębnych zagadnień, które albo nie regulują niczego konkretnego, albo powtarzają przepisy Kodeksu pracy. Co więcej, zbiór regulaminów w sposób niekontrolowany się rozrasta. Najczęściej tłumaczy się to pewnymi wymogami prawa unijnego, nowymi warunkami społeczno-gospodarczymi itp., podczas gdy w rzeczywistości rozrost ten wynika z niedostatecznej wiedzy organów tworzących prawo, ingerencji czynników pozaprawnych itp. Stwarza to wiele trudności w rozumieniu i stosowaniu przepisów prawa pracy.

Słowa kluczowe: kodeks, akt normatywny, norma prawna, prawo, wymogi unijne, stosunek pracy