EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

2012/29: How are Greece, Spain and Italy responding to pressure to reform their employment legislation? (Article)

<p>Anyone who follows the news will know that Greece, followed by Portugal, Ireland, Spain and Cyprus are in deep trouble and that there is pressure on them, and on other countries, notably Italy, to reform their labour markets and, in particular, their protective employment legislation. The key word is “flexibility”. The authors of this article thought it might be a good idea to inform the readers of EELC about the recent - in many cases dramatic - legislative developments in this area in Greece, Italy and Spain.</p>

Introduction

Anyone who follows the news will know that Greece, followed by Portugal, Ireland, Spain and Cyprus are in deep trouble and that there is pressure on them, and on other countries, notably Italy, to reform their labour markets and, in particular, their protective employment legislation. The key word is “flexibility”. The authors of this article thought it might be a good idea to inform the readers of EELC about the recent - in many cases dramatic - legislative developments in this area in Greece, Italy and Spain.

GREECE

On 11 May 2010 a law came into effect allowing what is known as “rotational employment”. An employer faced with a reduction in activities now has the option to obligate (unilaterally) all or some of its employees to work part-time instead of carrying out a redundancy operation.

The affected employees will then work, for example, on four, three or two whole days (no partial days) rather than on five days per week, their salary being reduced proportionately. There are two conditions that must be satisfied in order for an employer to apply rotational employment. One is that the employees' representatives (the relevant unions, the works council or, in the absence of both, the employees themselves) must be informed and consulted in due time and according to the correct procedure. The other is that the employer must notify the Labour Inspection Authority within eight days of the effective date of the new working schedule. The employees whose income has dropped are not eligible for unemployment benefits or any other benefits.

Ever since August 2010 pensions (both the "main" pensions, to which employers, employees and the State contribute, and the "subsidiary" pensions, to which only employers and employees contribute) have undergone successive reductions inasmuch as they exceed a certain minimum (€ 1,000 per month gross for main pensions and € 600 gross per month for subsidiary pensions). Depending on a number of variables, the reduction can reach 35% or even 40%. Not only has the level of pensions been reduced, the retirement age is being raised. Currently the retirement age is different for men and women. By 2015 they will be uniform, namely 60 for individuals who have been insured for 40 years and 65 for others, provided they have no less than 15 insured years.

On 14 December 2010 a law came into effect extending the maximum duration of temporary work. Under the old law, a temporary employment agency could assign "temps" to one and the same assignee (referred to in Greece as the "indirect employer") for no longer than 18 months, following which period, if the temps continued to work for that assignee, they automatically became (permanent) employees of the assignee. The 18 months have now become 36 months. This increases employers' ability to have work performed by (easily removable) temps rather than by (protected) own staff, thereby creating greater flexibility in adapting a company's workforce to fluctuating work levels.

In normal situations, employers may only dismiss employees if they simultaneously pay them severance compensation. Under the old law, this rule did not apply during the first two months, which were, in effect, a probationary period. The new law, which also entered into force on 14 December 2010, has extended this period to 12 months. This allows employers to hire people for a whole year and then dismiss them at no cost.

In February 2012 Law No. 4046/2012 was published under the title "Approval of the Draft Financing Facilitation Agreements among the European Financing Stability Fund, the Hellenic Republic and the Bank of Greece, of the Draft Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece, as well as other provisions of an urgent nature regarding the reduction of public debt and the preservation of national finance". The law came into effect on 14 February 2012. Its principal provisions,

inasmuch as they relate to employment law, are summarised below (paragraphs 6-12).
As of 14 February 2012, and for as long as the running programme for "fiscal consolidation" is ongoing (which could be a while), the minimum wage for all employees covered by the National Collective Labour Agreement (this is the collective agreement covering all employees who are not covered by a specific CLA, providing for minimum wages) dropped by 22% or, for those aged under 25 or in a trainee position, by 32%. The employer has the right to unilaterally reduce these employees' wages regardless of what was agreed with the employee.
Previously, collective labour agreements (CLAs) could be concluded for an indefinite duration or for very long periods. From now on, a CLA can only be concluded for a fixed term lasting no less than one year and no longer than three years.
CLAs that were in force on 14 February 2012 expire on 14 February 2013 or (if they were in force for less than 24 months on that date) 13 February 2014 at the latest, regardless of their agreed duration.
The terms of a CLA that has expired or been terminated and has not been replaced by a new CLA before 14 May 2012, with the exception of base salary and certain allowances, ceased to be valid on that date. The reasoning behind this is that it will encourage employers and employees to agree more flexible terms of employment on an individual basis.
Any provision of law, CLA, arbitral award or agreement that provides for an increase in salary is without effect until such time as unemployment in Greece has dropped to below 10%.
Any provision allowing one party to a (collective or individual) employment contract to unilaterally submit a dispute to arbitration is invalid. Moreover, even where both parties consent to arbitration, the recourse to arbitration must be limited to the determination of base salary. The arbitration may not extend to any other issue. The idea behind this is to encourage collective bargaining at the company level and to reduce the power of arbitrators, who tended to take a pro-employee position.
The concept of "quasi permanence" has been abolished. This affects employees in the public sector and in companies in which the Greek State owns a large portion of the shares. In this sector, many employees with a permanent contract have a "quasi permanent" status. This means that the normal rules regarding dismissal, i.e. notice with severance compensation, do not apply and, instead, there is a CLA or a set of Internal Working Regulations providing that, in the absence of serious misconduct, the employment contract cannot be terminated prior to a certain age, usually retirement age. All such provisions have automatically become null and void, in effect abolishing the "quasi permanent" status of these more or less "untouchable" employees.
Legislation is planned that will reduce the mandatory contributions to the Social Security Fund ("IKA") by 5 percentage points. Currently employers and employees contribute, respectively 28.56% and 16.5% of gross salary into this fund. Measures to finance this

reduction are also planned.
Measures have been announced to investigate and, where necessary, to boost the effectiveness of the Labour Inspection Authority, particularly in relation to its responsibility to identify and prosecute "undeclared" employment. Undeclared employment, i.e. work that officially does not exist, is a huge problem in Greece, in part because of the high percentage of (legal and illegal) immigrants.
By the end of 2012, all employees will be obligated to have on them, at all times, an electronic "employment card", on which their working hours are recorded. Companies that use this time tracking system and pay the correct amount of social security contributions will be given a reduction in the rate of those contributions.

ITALY

The Italian response to the financial crisis, inasmuch as it relates to the labour market, has been mixed. It consists mainly of two pieces of legislation. The first and most effective change of law, which took effect on 1 January 2012, was a radical reform of the state pension system. All pensions are now calculated on the basis of contributions paid during the entire working life and no longer on the basis of the last years of work. The retirement age for women was raised with immediate effect from 60 to 62. The retirement age for men (previously 65) and women (previously 60) is being raised in steps between 2012 and 2018, when it will be 66 for both. Retirement with full pension will be only possible provided the person has around 41/42 years of contribution paid. In some cases this means that people who might have retired in 2012 will now need six years more before getting their pension.

A controversial issue relates to employees (the so called "esodati" i.e. people made redundant and encouraged to accept terminations thanks to State support with additional indemnities) who, assuming they would be eligible to retire at an age earlier than the new one applicable from January 2012, resigned or agreed to leave at that earlier age within collective dismissal procedures with, in most cases, special State interventions and decrees who had authorized a longer period of unemployment benefits than usual, in order to reach the former retirement age. The government has promised to take measures to compensate these workers for the financial gap they would otherwise face.

The second legislative development relates to employment law. Following months of negotiations, on 5 April 2012 Prime Minister Mario Monti presented Parliament with a Bill aimed at reforming the Italian labour market. In the last week of June 2012 this led to a 50-page law that disappointed both labour (which considers the reforms go too far) and industry (which disagrees with the restrictions against the abuse of fixed term contracts and fake consultancy contracts). The new law took effect on 18 July 2012. The principal and most

controversial change is that dismissal will lead less frequently to a court order for reinstatement and more frequently to court-ordered financial compensation instead.

The shift from reinstatement to compensation applies mainly to collective dismissals (five or more within 120 days) in large companies (with 15 or more employees) where the procedural rules relating to collective dismissal have not been fully complied with. In the past such non-compliance resulted in reinstatement and frequently in enormous damages due to the length of the judicial proceedings. Now the sanction is an indemnity ranging from 12 to 24 months' salary. However, failure to apply the correct selection criteria (a blend of company seniority, family dependants and technical and organisational reasons) will still result in reinstatement and damages equal to all salary lost between termination and reinstatement, capped at 12 months' salary as a maximum.

The shift from reinstatement to compensation also applies to certain situations where an individual employee is dismissed for misconduct that is not substantiated and for certain cases of non-collective redundancy.

Another improvement, from an employer's point of view, is that the first fixed-term contract can now be concluded, without the need for a reason to be given, for a non-extendable maximum of 12 months. Simultaneously, however, measures have been put in place to prevent abuse of fixed-term contracts. The interval between two such contracts that is required in order for both contracts not to qualify as one longer contract has been increased to 60 and 90 days (from the former 10 or 20) for contracts of under and over 6 months, respectively. Time worked as a "temp" immediately prior to the fixed-term contract now counts towards determining the maximum duration of a fixed contract (36 months if the contract was entered into for a specific reason, otherwise 12 months for the initial contract only). Fixed-term contracts have also become more costly in terms of social security contributions. A challenge against the term of a fixed-term contract must now be made within 120 days from the end of the contract and the judicial claim must be brought within 120 days of the challenge.

Perhaps the biggest improvement will prove to be procedural. Certain provisions have been enacted that will, hopefully, speed up court procedures. Also, a settlement attempt is now required in certain situations of redundancy, before the termination can be communicated.

As a concession to the unions, measures have been introduced to combat the abuse of fake "consultancy" or "partnership" agreements that are in fact employment contracts. One such measure is that a consultant who has either worked for a company for over eight months on the basis of a contract entered into after 18 July 2012 and over 80% of whose income is derived from that company, or who has a fixed position in that company's premises (two of these

conditions are required), shall be deemed to be in that company's permanent employment, unless he is a lawyer, accountant, or similar truly independent, registered professional or unless he earns in excess of about € 18,000 per year.

However, terminations have been made more difficult in one respect: resignations and terminations by mutual consent must be confirmed with the Employment Office according to a specific procedure. This is to avoid employers requiring employees to pre-sign resignation letters at the time of hiring or during employment, as a condition of their employment.

In brief, the recent reform of Italian employment law is complex (in fact, a lawyer's paradise), but nothing like as radical as the Greek and Spanish reforms. Moreover, instead of making the practical management of employment contracts easier for both parties, the new statute adds - if possible - more bureaucracy to Italian employment law.

Interestingly, the radical and effective change in pension law has been discussed and criticized less intensely than the other less draconian changes in the employment law. Whether this is due to the fact that Prime Minister Monti's popularity was as its height when the pension reform was approved, whereas he is much less supported now, or because people really understood that pension reform was necessary, is difficult to say.

SPAIN

Spain has taken and is in the process of taking strong measures to adapt its employment law to face the economic crisis, with a view both to dealing with the budget deficit and to reducing unemployment. The purpose of the labour reform is not only to solve the current crisis but also to address several of the issues that have traditionally hampered labour relations in Spain. Thus, when the economy picks up again, employment law should no longer be viewed as an obstacle to competitiveness but as a useful tool for increasing competitiveness and productivity. Below is an overview of the principal changes. Some were brought about before the present government was elected in November 2011, others were the result of a Royal Decree introducing emergency measures on 12 February 2012 and still others resulted from the law that converted that decree, with amendments, into law with effect from 8 July 2012.

The ordinary retirement age, from which citizens are eligible for State pension benefits, has gone up from 65 to 67, with transitional provisions in favour of citizens close to retirement age, depending on their age and number of contributory years.
The rules in respect of collective bargaining have been modified to the advantage of company agreements rather than traditional industry-wide agreements. The idea behind this is that singleemployer bargaining is more readily adaptable to changed circumstances than industry-

wide bargaining. With regard to certain matters, such as salary, working times, changes of position and work-life balance, collective agreements concluded at company level now take precedence over sectorial agreements. Further, if negotiations on a new collective agreement following the expiry of an old one take longer than one year, the old agreement automatically ceases to be valid. This should put pressure on the unions when re-negotiating collective agreements. Finally, employers now have the right not to apply a collective agreement temporarily in the event of certain circumstances of an economic, productive, technical or organisational nature. Employers wishing to make use of this facility must follow a certain procedure, which involves negotiating with the employees' representatives and, if no agreement can be reached with them, submitting to a dispute resolution system.

The rules in respect of collective redundancies have been relaxed and tightened up at the same time. The relaxation makes it easier for employers to reduce their workforce for "business" reasons: economic, productive, technical or organisational. The employer, when dismissing on "economic" grounds, must demonstrate "a persistent decrease of ordinary income or sales", and such a decrease is now deemed to be "persistent" if it has continued for nine months consecutively. The consent of the Labour Authority, if employers fail to reach agreement with the unions, is no longer required. Now, if the mandatory negotiation period does not yield an agreement with the unions, the employer may simply go ahead with the lay-offs as planned. On the other hand, the rules requiring employers to provide employees and their representatives with information and to offer a social plan have been reinforced.

Non-collective dismissals for business-related reasons have also become slightly easier. The same reasons as for collective redundancies apply. An employer dismissing staff for productive, technical or organisational reasons no longer needs to provide evidence that the dismissals are a reasonable measure to prevent the employer from making a loss or having a seriously reduced financial result.

Not only have (collective and individual) redundancies become easier, the cost of terminating employment contracts has also been reduced. As of 12 February 2012, terminations declared unfair will attract a severance payment of 33 days' salary per year of service with a maximum of two years' salary. Previously, unfairly dismissed employees were awarded 45 days' salary of severance per year of service up to a maximum of 42 monthly instalments.

The new severance amounts will apply to seniority accrued after February 12, 2012, with retention of the previous entitlements for prior service.

The procedural rules governing employment disputes have changed now that such disputes are heard by special employment courts rather than by the administrative courts. Employment courts are faster than administrative courts.

The new rules give employers greater ability to make changes in their employees' position, place of work or working conditions ("internal flexibility"). For example, the Labour Authority

has lost the power to temporarily suspend the relocation of a group of employees to another place of work. In addition, a modification of employees' collective terms of employment is considered to be "individual" and not "collective" if it affects no more than a certain number of employees, making it easier to depart from collective conditions terms at short notice.
In certain circumstances, companies that make employees aged 50 or over redundant are now obligated to pay a contribution to the Public Treasury. Whether or not this is the case depends on the size of the (group of) companies and on whether those companies or group of companies made a profit in the two business years prior to the redundancies.
The government has introduced a number of measures in support of entrepreneurship. One of these is that businesses with fewer than 50 employees may now enter into permanent full-time employment contracts with a probationary period of one year. Another measure is the introduction of social security incentives for hiring young, old, unemployed or female persons.
Finally, there are several minor amendments in the law in respect of traineeships, part-time work, teleworking and work-life balance.

The above is an overview of existing legislation. There is more to come.

Creator:
Verdict at:
Case number: