SUMMARY

# 2012/54 Economic woes justify 20% salary cut (GR)

***<p>The employer’s unilateral reduction of the employee’s salary was considered lawful and not abusive, since it was done in the context of the exercise of the employer’s managerial rights, by reason of the economic difficulties the company faced.</p>***

**Summary**

The employer's unilateral reduction of the employee's salary was considered lawful and not abusive, since it was done in the context of the exercise of the employer's managerial rights, by reason of the economic difficulties the company faced.

**Facts**

The defendant in this case was a manufacturer of doors, aluminium windows and similar products. The plaintiff was an employee who had been employed since March 1995 as an IT programmer. Until June 2010 his salary had been € 2,687.75 per month. On 23 June 2010 the company requested him in writing to consent to a 20% reduction in his salary. The plaintiff protested. The next day he confirmed his protest in a letter in which he expressly stated that he considered the proposal to constitute a unilateral detrimental amendment to his terms of employment. Despite this protest, the employer proceeded to reduce the plaintiff's salary, with retroactive effect from May 2010.

The employee filed a claim before the First Instance Court of Thessaloniki, requesting the court to declare that the unilateral reduction of his salary constituted a detrimental amendment to his employment terms; that the company should be required to accept his services on the basis of the initial terms of his employment agreement (as far as the level of his salary was concerned); and finally that the company should be obliged to pay to him the

difference between his old and new salary.

**Judgment**

The court found in favour of the employer. It ruled that the reduction of the plaintiff's salary took place for specific economic and technical reasons, namely the decline in the employer's business, and that the employer had exercised its statutory 'managerial right' without abusing that right.

In particular, the court emphasized that the company's turnover had been declining steadily ever since 2003. In 2010, its turnover was no more than 53.41% of what it had been in 2007. Since that year the profits had continued to decrease and the losses had continued to increase. In the last three years (2009, 2010 and 2011), the company had not distributed any dividends to its shareholders.

The court finally noted that the employee's salary was higher than the statutory minimum wage.

**Commentary**

This case has been heavily criticized in the legal literature, as well as by legal practitioners, since it violates the principle of freedom of contract, according to which whatever has been agreed should be respected ("pacta sunt servanda").

The principle that no amendment of the terms and conditions of an employment relationship, leading to a deterioration of the employee's terms, can take place without express consent, is a rule always strictly respected by the Courts. However, the Court in this case accepted that an employer has the authority to impose salary reductions unilaterally using the legal notion of 'managerial right', in order to safeguard its business. This reverses the established rule that management has no right to interfere unilaterally to amend what had been agreed on salary.

The criticism focuses on the fact that the decision erroneously reversed the hierarchical relationship between employment contract and managerial right. It is argued that the employer had other options. For example, it could have treated the refusal of the employee to accept the amendment to the terms of his employment agreement as a reason for dismissal and then terminated the contract, in which case the employee could have made a claim for constructive dismissal.1

Finally, the decision was also criticized on the basis that the company's economic problems were not recent, but dated from 2003 and that in 2008 the employer had granted a salary increase to the employee.

It is worth noting that the employee was finally dismissed and that he contested the validity of his termination by means of a second lawsuit.

**Academic comment by Professor Constantinos Bakopoulos**

Not every decision is correct but few decisions are as boldly wrong as this. The court said that the managerial authority entitled the employer to unilaterally change a core employment term. This was a clear mistake. The traditional understanding is that, unless otherwise agreed, the managerial authority stops where the contract begins. Moreover, the managerial authority refers to the employee's, not the employer's obligations. (It is of course possible, under certain conditions and constraints, to contractually extend the scope of the managerial authority by stipulating the employer's right to unilaterally change certain employment terms, including a part of the remuneration. This, however, was not the case here.)

The court found further that, in consideration of the financial difficulties the company was facing, the "managerial right" had been exercised in conformity with the principle of good faith (not abusively - Article 281 of the Greek Civil Code). This was irrelevant since such a right did not exist. Financial difficulties cannot derogate from the principle pacta sunt servanda.

The proper tool to reduce the agreed salary (or to change any other essential employment term) would be constructive dismissal, i.e. the proposal of a contract amendment accompanied by its termination in case of non-acceptance. In Greece however, constructive dismissals in that formal sense are rather rare. The Greek method is that the employer either proposes to the employee the new terms (and terminates the contract if the employee declines the offer), or directly applies them into the contract. The latter is called a unilateral detrimental amendment of the terms of employment. The employee has then three options: either accept the new terms, in which case the contract is consensually amended; or reject, in which case the employer will be forced to terminate the contract (and pay the statutory dismissal severance) in order not to be in breach of contract. The law gives the employee a third option which is practically a shortcut of what would happen if he took the second option: Article 7 of Law 2112/1920 provides that a unilateral detrimental amendment of the employment terms can be deemed by the employee to constitute dismissal and to trigger his statutory right to termination severance. In other words: Pacta sunt servanda: the employer cannot unilaterally achieve the continuation of the contract on modified terms; nevertheless, he can be freed at the cost of the dismissal severance. The court decision reported above allowed him to do so at no cost. Hopefully, this judgment will remain a unique case.

It is worth mentioning that the "crisis legislation" which in the course of the last three years

has overhauled important institutions of Greek employment law (such as the system of collective agreements, arbitration, minimum wages, notice periods and severance amounts, flexible employment forms, retirement conditions, etc.) did not touch the above basic rules of individual contractual freedom.

**Comments from other jurisdictions**

*Austria (Martin Risak)*: The critique reported in the author's Commentary would have been raised in the same way in Austria. Here it is an almost sacrosanct principle that a unilateral change of employment conditions may only take place if the employment contract provides for such a right. Whilst a managerial right is implied in the contract, this concerns the work to be delivered, in particular, what, where and how exactly the work is to be done. By contrast, the right to alter remuneration must be ageed explicitly. Even if such a right is found to exist, the courts may review in each case whether the employer acted in a just and fair way. In the absence of a contractual provision the employer may resort to dismissing the employee with notice, with the option of a new contract incorporating the new remuneration.

*Germany (Paul Schreiner)*: Under German employment law an employer generally cannot unilaterally reduce an employee's salary based on managerial rights, since this would be a violation of the principle "pacta sunt servanda".

If the employer wishes to change the contract, it needs to issue a notice of termination in which it offers changed conditions of employment – in this case different pay. If the Dismissal Protection Act applies, such notice of termination must be supported by a valid reason.

There is one exception to this general rule regarding pay: if the parties to the employment contract agree, pay can be reduced by up to 25% if working time is changed accordingly. Further exceptions might occur with regard to one-time benefits such as a "13th month salary" (i.e. a bonus), which can also be withdrawn under certain conditions.

*The Netherlands (Peter Vas Nunes)*: The situation in The Netherlands is not very different from that in Austria (see Martin Risak's commentary above). Very recently (7 January 2012), the Dutch software company Cap Gemini caused a stir by requesting certain senior IT staff, whom it claims are being overpaid, to agree "voluntarily" to a reduction of salary by up to 10%, thereby addressing the delicate topic of demotion for long-serving and therefore older staff whose salary has risen beyond (new) market levels as a result of more or less automatic salary raises.

**Footnote**

1 For more detail see Professor Koukiadis-Zerdelis' "Legal Opinion" DEN 2011/1553 and Gavalas' article "Pacta non sunt servanda?" EED 2012/71/917.

EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

**Subject**: Terms of employment

**Parties**: Employee – v - Company "D"

**Court**: First Instance Court of Thessaloniki

**Case number**: 8561/2012

**Hard Copy publication**: Not yet available, but can be found in DEN 1610/2012, page 1201 and EED 13/2012 page 922

**Internet publication**: Not yet available

---

**Creator**: First Instance Court of Thessaloniki
**Verdict at**:
**Case number**: 8561/2012