



Flash Reports on Labour Law November 2019

Summary and country reports

Written by The European Centre of Expertise (ECE), based on reports submitted by the Network of Labour Law Experts

November 2019



EUROPEAN COMMISSION

Directorate DG Employment, Social Affairs and Inclusion

Unit B.2 – Working Conditions

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This publication has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, **2019**

ISBN **ABC 12345678**

DOI **987654321**

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Executive Summary

National level developments

In November 2019, important developments in labour law took place in several Member States and European Economic Area (EEA) countries (see Table 1). **EU law** was particularly relevant for the following legislative initiatives and judicial decisions:

Working time

In **Denmark**, the Western High Court has issued an important ruling for the definition of working time and rest periods. It was discussed whether the time that a taxi driver spent at home, with the employer's consent, between rides, was to be considered rest period or working time. The Court considers that even though the driver's average response time was 29 minutes it restricts his possibilities to use his time between rides, so it must be considered working time. In **Germany**, the introduction of a clause that allows for derogations of the Working Time Act by collective agreements has been agreed in the coalition agreement for this legislative period. In **Lithuania**, the Supreme Court has issued a ruling regarding working time of mobile workers that establishes some obligations on the employer in relation with rest time and holidays. Compliance with these obligations shifts the burden of proof to the employee when claiming additional payment for work performed on rest days and public holidays. In **Norway**, the Appellate Court has ruled in a case concerning the definition of working time. It was discussed whether the travel time from home to the first customer and from the last back home was working time. The court has found that this travel time is indeed working time. In **Spain**, the collective agreement of the centres and services for persons with disabilities empowers the company to freely determine the recording system of the working day, after consultation with the workers' representatives, although it imposes some mandatory requirements or guidelines on the employer

Dismissal protection

In **France**, several rulings of the Court of Cassation regarding dismissal have been issued. In one of them the Court has decided that the verbal announcement of dismissal in a public meeting before the formal pre-meeting constitutes a verbal dismissal without a real and serious cause and, therefore, is not valid. In **Iceland**, the Court of Appeal decided in two cases of dismissal in favour of the employees, because the causes for their dismissal had not been sufficiently proven. In **Spain**, the Constitutional Court has decided that the type of dismissal that allows the employer to terminate the employment contract for repeated absences of the worker, even if they are justified, is not contrary to the fundamental rights to health and physical integrity and is not discriminatory.

Work in Fishing

Three countries, namely **Bulgaria**, **Poland** and **Croatia**, have reported the adoption of legislation or legislative reforms to implement totally or partially Directive (EC) 2017/159 of 19 December 2016 transposing the Work in Fishing Convention.

Migrant workers

In **Bulgaria**, an Agreement between the Government of the Republic of Bulgaria and the Government of Georgia regulating labour job brokering, working conditions and social rights and the return of migrant workers of both countries has been published. In **Croatia**, the Government has issued the Decision on Annual Quota of Work Permits for the Employment of Aliens for the Year 2020. In **Ireland**, the General Scheme of a Bill to consolidate and amend the Employment Permits Acts 2003–2014 has been published. The aim is to update provisions for the employment permits schemes in line with policy and economic developments. These changes would allow the economic migration system to implement the recommendations set out in the

Department's Review of Economic Migration Policy 2018.

Minimum wage

In **Croatia**, The Government of the Republic of Croatia has issued the Regulation on the Amount of Minimum Wage. In **Estonia**, the Estonian Trade Unions' Confederation and Estonian Employers' Association reached an agreement on a new minimum wage. In **Portugal**, Decree Law No. 167/2019 of 21 November approves an increase of the minimum monthly guaranteed wage to EUR 635 from 1 January 2020.

Wage

In **Germany**, the Federal Council approved the Nursing Wage Improvement Act. It implements the results of the Concerted Action on Care. In order to improve the remuneration of nursing staff, the law enables the Federal Ministry of Labour to establish a collective agreement between employers and employees in the nursing sector to be generally binding. In **Slovenia**, the *Act Regulating Measures Relating to Wages and Other Labour Costs for 2020 and 2021 and Other Measures in the Public Sector and Extraordinary Adjustments of Pensions* was adopted by the National Assembly of the RS. The Act intends to make it possible for the national budgets of 2020 and 2021 to be realised smoothly. The Act provides the amount of compensation officials shall be entitled to in 2020 and 2021 in case of absence from work due to illness or injury not connected with their work, the way in which the anniversary bonus shall be paid out in the public sector, the limitations of job performance payments of civil servants and officials, the limitations on the agreements related to increased amounts of work of civil servants and the extraordinary adjustment of pensions in 2020. The National Council has vetoed the Act. The voting in the Assembly will be repeated in early December. In **Sweden**, the Swedish wage negotiations for 2020 are currently being negotiated and the model of well-coordinated, standardised

negotiations based on the competitiveness of the internationally exposed industrial sector has come under some scrutiny. The large trade union for municipality blue collar workers, *Kommunal*, has decided to break away from the coordination through the overarching blue collar workers' union federation, LO, to better promote more significant wage increases for their members. *Kommunal* unionises child care workers, assistant nurses and similar workers in the local municipality sector.

Table 1. Main developments (excluding implications of CJEU or EFTA-Court rulings)

Topic	Countries
Working time	DK, DE, LT, NO, ES
Dismissal protection	FR, IS, ES
Work in Fishing	BG, PL, HR
Migrant workers	BG, HR, IE
Minimum wage	HR, EE, PT
Wage	DE, SI, SE
Discrimination	FR, HU,
Platform work	FR, IT
Annual leave	DK
Allowances	CZ
Collective bargaining	DE
Collective redundancies	RO
Confidentiality	IS
Disabled workers	ES
Dual Education	BG
Employment contract	FR
Employability package	BE
Posting of workers	DE
Public holidays	HR
Seasonal work	DE
Severance pay	IS
Social dialogue	SI
Strike	HR
Transfer of Undertakings	UK
Work of minors	HR

Belgium

Summary

(I) Article 7(1) of Working Time Directive 2003/88 does not preclude national legislation or collective bargaining agreements that provide for days of paid annual leave in excess of the minimum period of four weeks, but precludes carrying over such leave on the grounds of illness. Although higher standards of protection of paid annual leave in sector-specific collective agreements are permissible, the Charter does not apply to them.

(II) The absence of collective bargaining agreements to implement the statutory measures, such as outplacement, to improve the employability of workers who are entitled to long periods of notice implies that the employer and employee do not have to pay the special social security contribution intended to sanction the absence of the employability package.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joint cases C-609/17 and C-610/17 *TSN*, of 19 November 2019

Factual part

Ms. Luoma, laboratory assistant for Fimlab Laboratoriot Oy, was entitled to four weeks' statutory annual leave and three weeks of additional annual leave in accordance with the collective labour agreement applicable to the health sector. For a six-day week, this amounted to a total of 42 working days for the reference year ending 31 March 2015. After a surgery, Ms. Luoma was on sick leave until 23 September 2015. She had taken 22 days of leave, i.e. three weeks and four working days. Fimlab Laboratoriot carried over the two remaining days of statutory annual leave to the next reference year, but not the remaining days of leave associated with the collective bargaining agreement for the health sector.

The Court of Justice confirmed this course of action. Since the Working Time Directive 2003/88 only sets down minimum requirements for annual leave, Member States remain free to decide whether or not to provide for a right to carry over additional leave. Member States may, where appropriate, lay down the conditions for such a transfer, provided that the right to paid annual leave actually accruing to the worker remains at least equal to the minimum period of four weeks.

Finally, the Court stated that since additional annual leave is not covered by provisions of European Union law, it does not fall within the scope of the Charter of Fundamental Rights of the European Union.

Analytical part

This ruling judgment is important because, in Belgium, several collective bargaining agreements provide for entitlements to a longer period of paid annual leave than the minimum specified in Article 7(1) of the Working Time Directive. Where applicable, these Belgian collective bargaining agreements shall lay down the conditions for entitlement and cancellation of these additional days of leave. And it is also likely that these collective bargaining agreements do not entitle the right to carry over the days of paid annual leave in excess of this minimum period if the worker was incapacitated for work due to illness during (part of) the period of paid annual leave.

4. Other Relevant Information

Since the Single Employment Status for (blue collar) Workers and (white collar) Employees Law of 26 December 2013 (see Belgian Flash Report 12/2013), was introduced, Article 39ter of this Law contains a provision that requires each joint committee to stipulate in a collective bargaining agreement that workers/employees who are dismissed with a notice period of at least 30 weeks or a corresponding dismissal compensation, are entitled to a package of measures, such as outplacement, to improve their employability.

This employability package must consist of: (i) for 2/3: a notice period or a corresponding dismissal indemnity in lieu of notice, (ii) and for the remaining 1/3: measures to increase the worker's employability in the labour market. However, the scheme may not result in the notice period or dismissal compensation decreasing to less than 26 weeks.

If the entire redundancy package applies to an employee who has been dismissed and who meets the conditions to be entitled to the employability package as a notice period or if he/she receives a dismissal indemnity in lieu of notice for the entire package, a special social security contribution of 1 per cent shall be due at the expense of the employee and 3 per cent at the expense of the employer (Article 38, §3 quaterdecies of the Law of 29 June 1981 on the general principles of social security for workers, as amended by Article 93 of the Single Employment Status Law of December 2013). Initially, the legislator gave the joint committees until 1 January 2019 to conclude collective bargaining agreements that provide for the legally prescribed employability package. On 1 January 2019, however, no private sector joint committee had yet fulfilled this obligation. To give the social partners in the joint committees the opportunity to work out an inter-professional arrangement with an alternative solution for the use of part of the severance pay, the deadline of 1 January 2019 was moved to 30 September 2019 and provision was made for the possibility of setting a later date by means of a Royal Decree, which may not, however, be later than 1 January 2021.

Although the deadline of 30 September 2019 has expired, no inter-professional regulation has yet been drawn up and no sectoral collective bargaining agreements have yet been laid down that provide for the legally prescribed employability package. Nor has a Royal Decree been issued that postpones the deadline of 30 September 2019 to a later date.

It is clear that the legal scheme is not successful. This is evident not only due to the absence of sectoral collective bargaining agreements, but also of the legislative proposal to abolish the statutory provision that requires the sectors to conclude such collective agreements (see the socialist legislative proposal of representative Mrs. L. Dedonder and others of 8 November 2019, Parliamentary Documents, *Chamber of Representatives*, 2019-2020, No 55-0730/001).

What are the consequences of the absence of collective bargaining agreements? For one, the special employee and employer social security contributions cannot be collected at present. According to the law, the contributions are only due if the entire redundancy package applies to an employee who has been dismissed and "who meets the conditions



to be entitled to a redundancy package that includes measures to increase employability" as a notice period or if he/she receives dismissal compensation in lieu of notice for the entire package.

The absence of collective agreements also means that:

- (i) the employer does not have to provide a redundancy package with employability enhancing measures for employees who are entitled to a notice period of at least 30 weeks or a corresponding dismissal compensation,
- (ii) the employer may not replace even one-third of the notice period or compensation by such measures,
- (iii) an employee who is entitled to a notice period of at least 30 weeks or corresponding dismissal compensation cannot at present request employability measures.

Bulgaria

Summary

Several legal acts were adopted in Bulgaria in November 2019. They concern special employment relationships.

1 National Legislation

1.1 Accommodation on fishing ships

The Council of Ministers adopted Decree No. 280 on amendments and supplements to the Ordinance of the Council of Ministers for Employment and Immediately Connected Relationships between Ship Crew Members and Shipboard Personnel and the Ship Owner of 2003 (State Gazette No. 89 of 12 November 2019). It transposes Article 20 of Directive (EC) 2017/159 of 19 December 2016. The provisions regulate accommodation on fishing ships.

1.2 Dual education

The Minister of Economics issued Ordinance No. RD-04-4 of 09 November 2019 on the Conditions and Procedure for the Creation and Maintenance of an Information Database of Employers, Satisfying the Requirements for Participation in the Partnership for Performing Education through Work (Dual Education) (State Gazette No. 91 of 19 November 2019). The Ordinance regulates the requirements and data to be included in this database.

1.3 Labour migration

An Agreement between the Government of the Republic of Bulgaria and the Government of Georgia was published in State Gazette No. 93 of 26 November 2019. It regulates labour job brokering, working conditions and social rights and the return of migrant workers of both countries.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Croatia

Summary

(I) The new Act on Public Holidays, Commemorative Days and Non-working Days has been adopted in the Republic of Croatia.

(II) Three regulations related to the implementation of Directive 2017/159/EU have been amended.

(III) The Government of the Republic of Croatia has issued the Regulation on Minimum Wage as well as the Decision on the Annual Quota of Work Permits for the Employment of Aliens for the year 2020.

(IV) The strike of teachers in public elementary and high schools is still ongoing.

1 National Legislation

1.1 Act on Public Holidays, Commemorative Days and Non-working Days in the Republic of Croatia

The [Amendment](#) refers solely to the competent administrative body for labour affairs. It is no longer 'the county public administration office or the City of Zagreb office responsible for labour', but 'the administrative body of the county/the city of Zagreb that is in charge of state administration affairs related to labour'.

The new [Act on Public Holidays, Commemorative Days and Non-working Days in the Republic of Croatia](#) (Official Gazette No. 110/2019) has been adopted. The reason for its adoption is that some holidays were not celebrated by people and some important dates in recent Croatian history were not properly commemorated in the previous Act on Holidays, Public Holidays and Non-working Days in the Republic of Croatia of 1996 (as amended in 2011). Instead of on 25 June, Statehood Day will be celebrated on 30 May. Independence Day will no longer be a public holiday but a commemorative day. Remembrance Day for Homeland War Victims and Remembrance Day for the Victims of Vukovar and Škabrnja, which will be celebrated on 18 November will be new holidays. New commemorative days have been added to previous ones in Article 2 of the new Act.

1.2 Amendment to the Regulation on Prohibited Jobs for Minors

The [Amendment to the Regulation on Prohibited Jobs for Minors](#) (Official Gazette No. 109/2019) transposes Directive 94/33/EC and Directive 2017/159/EU. Work on sea fishing vessels has been designated as work that represents special hazards for minors.

1.3 Amendment to the Regulations on Working Time, Rest Periods and Leaves of Employees on Sea Fishing Vessels

The [Amendment to the Regulations on Working Time, Rest Periods and Leaves of Employees on Sea Fishing Vessels](#) (Official Gazette No. 109/2019) transposes Directive 2017/159/EU into Croatian legislation. For reasons of clarity, two provisions have been amended: Articles 5(1) and 5(4). According to Article 5(1), full-time and part-time working time as defined by law, collective agreements, agreements concluded between the works council and the employer, work rules and employment contracts, does not need to be scheduled equally by days, weeks or months. According to Article 5(4), in periods in which working times are longer than full-time or part-time working time, the



total working time cannot be longer than 14 hours during a 24-hour period or 72 hours during a 7-day period. However, it can last longer when prescribed by the law, other regulation or collective agreement, and the employees are provided with a substitute rest period.

1.4 Amendment to the Regulations on the Registration Procedure and Content of the Register of Employment Contracts of Seafarers and Employees on Sea Fishing Vessels

The [Amendment to the Regulations on the Registration Procedure and Content of the Register of Employment Contracts of Seafarers and Employees on Sea Fishing Vessels](#) (Official Gazette No. 109/2019) transposes Directive 2017/159/EU into Croatian legislation. Among others, it refers to the content of the employment contract of seafarers or workers on sea fishing vessels. Apart from clauses of the employment contract that have been regulated so far, the employment contract needs to contain the place of birth of the seafarer / worker on the sea fishing vessel and their rest periods.

1.5 The minimum wage

The Government of the Republic of Croatia has issued the [Regulation on the Amount of Minimum Wage](#) (Official Gazette No. 106/2019). It amounts to HRK 4 062.51 (EUR 547.00)

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Annual quota of work permits for aliens

The Government of the Republic Croatia has issued the [Decision on Annual Quota of Work Permits for the Employment of Aliens for the Year 2020](#) (Official Gazette No. 113/2019). It amounts to 78 470 work permits, which is higher than last year. The quota for 2019 amounted to 68 100 work permits.

4.2 Strike of teachers in public elementary and high schools

The strike of teachers employed in public elementary and high schools that started more than a month ago is still ongoing. The Government of the Republic of Croatia and the trade unions have not yet reached an agreement on the raise of salaries.

Czech Republic

Summary

A Ministerial Decree regulating base rates for meal allowances in foreign countries has been issued.

1 National Legislation

1.1 Base rates for meal allowances

Factual part

A [Ministerial Decree of the Ministry of Finance No. 310/2019 Sb. on base rates for meal allowances abroad for the year 2020](#) has been issued.

The Ministry of Finance has issued new base rates for meal allowances abroad, i.e. the base amount of money for the purpose of catering which an employee is entitled to when going abroad on a business trip.

Such a decree is issued annually. In 2020, the base rates will be increased for the following countries: Andorra, Australia and Oceania, Bahrain, Bosnia and Herzegovina, Denmark, Chile, Ireland, Island, Italy, Jordan, North Korea, Luxemburg, Malaysia, Malta, Norway, New Zealand, Oman, Saudi Arabia, Singapore, the United States of America, Syria, Spain and Venezuela.

The base rates of the remaining countries are not affected by this year's decree. The increase in base rates amounts to USD/EUR 5 in most cases (with the exception of Oman and Singapore where the increase amounts to USD/EUR 10).

The Decree was published on 26 November 2019 and will come into effect on 01 January 2020.

Analytical part

This is not an important development and does not depart from previous lines of case law. There are no likely implications in the legal or political arena. It seems to be in line with the EU *acquis*.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Denmark

Summary

(I) The definition of working time vs. rest periods for on-call work from home was dealt with in detail. It is the first Danish case to deal with this question, and the Western High Court used the CJEU rulings of *Simap* and *Matzak* to bring the Danish legal provisions in line with the EU *acquis* on this issue.

(II) Another question was how to calculate payments, including how to include commission, in the payments during annual leave. The Supreme Court relied primarily on the preparatory works to the (former) Danish Holiday Act in stating that the employee was entitled to a holiday allowance of 12.5 per cent of his/her earnings from the previous year. The calculation method was not found to be in conflict with Article 7 of the Working Time Directive. As the Holiday Act will be amended next year from accrued payments to same-time payments, the effects of this interpretation and the ruling is limited.

1 National Legislation

1.1 Working environment

A [proposal to amend the Working Environment Act](#) of Denmark was presented on 19 November 2019 by the Ministry of Employment. The proposal includes, inter alia, an intensification of the control of foreign enterprises performing work in Denmark and introducing tougher sanctions for breaches of the regulation.

The act has only been proposed and is now being debated in the Parliamentary Committee.

2 Court Rulings

2.1 Working time, definition of working time and rest periods

Western High Court, No. U 2019.4136, 26 August 2019

Factual part

The question the court dealt with was whether the average working time of a taxi driver employed by a transportation contractor exceeded 48 hours over a reference period of four months.

The driver reported to work at 6:03 AM, and the shift usually ended at 11.55 PM, sometimes earlier. The driver could not log out of the system during his shift, and he could not plan his trips in advance. The driver was often required to respond quickly when he was notified of a new trip.

The waiting time between trips was often spent at the driver's residence, with the employer's consent. However, the parties disagreed on whether the time spent at the driver's residence should be regarded as rest periods or working time.

The Western High Court—citing the CJEU rulings of *Simap* (C-303/98) and *Matzak* (C-518/15)—found that even though the driver's average response time was 29 minutes, he had to be prepared to leave his home with a very short warning. That objectively limited his possibilities of devoting himself to own personal and social interests during the time spent at home while on call.

Thus, the waiting time spent at the driver's residence was to be regarded as working time. Consequently, the driver had performed weekly work exceeding 48 hours.

The driver was awarded compensation in the amount of DKK 25 000 (EUR 3 200), which is the default compensation as set out by the Supreme Court in ruling No. U 2018.763 H of 14 November 2017 (see also November 2017 Flash Report).

Analytical part

The regulation of a maximum weekly working time of 48 hours has drawn more attention in recent years. There seems to be an increase in cases. In general, however, case law on working time is still limited.

This ruling is important as it defines the relevant criteria for assessing whether an employee performs work when he/she spends time at home while on call (the distinction between working time and rest periods). This question has not previously been dealt with in higher court cases.

The Danish High Court explicitly cited case law from the CJEU, in particular the Simap and Matzak cases, in its ruling and used the terminology from the Matzak case in its reasoning.

The ruling is in line with the EU *aquis*.

The Danish Working Time Act is available [here](#).

2.2 Annual holiday

Supreme Court, No. BS-2518/2019-HJR, 19 November 2019

Factual part

A dental therapist received remuneration consisting of a basic salary and a commission. The commission was 25 per cent of incoming fees exceeding DKK 75 000.

The employer did not dispute that the employee was entitled to both the basic salary and the commission during her annual leave, but the parties did not agree on how to calculate the commission.

The employee argued that it should be calculated based on the incoming fees or commission earned over the last three months, with a correction for absences. This was a higher calculation rate of the commission.

The employer argued that it should be calculated as a holiday allowance (12.5 per cent) of the commission earned in the previous year, with reference to the preliminary works to the (now former) [Danish Holiday Act](#). This was a lower calculation of the commission.

[The Supreme Court found](#) that the Holiday Act and its [preliminary works](#) elaborates how to calculate the compensation for lost commission during holidays. The former Holiday Act explicitly stated that holiday pay is calculated on the basis of the previous year's earning. The Act did not give the employee or the employer a choice of calculation methods.

The employee was not entitled to more compensation than already paid by the employer.

The Supreme Court stated additionally that this calculation method did not conflict with the Directive on Working Time – more specifically, the requirement that compensation for lost commission in connection with annual leave must be calculated on the basis of



an average over a reference period that is considered to be representative, as stated in the CJEU ruling of 22 May 2014, C-539/12 (*Lock v British Gas*).

Analytical part

The ruling is in line with earlier case law of the Supreme Court establishing how to calculate lost commission during holidays, cf. [U 2016.2163 H](#).

The Supreme Court reiterated that the payment of the holiday allowance in the amount of 12.5 per cent of commission earned in the previous year did not conflict with Article 7 of the Directive on Working Time and the interpretation thereof in *Lock v British Gas*.

The consequences of the ruling are limited, as a [new Holiday Act](#) will enter into force on 1 September 2020. The new Act explicitly states that an employee shall be compensated for lost commissions during holidays with a payment of holiday allowances (12.5 per cent) of the lost earnings.

It is, however, not yet clear how compensation for lost commission is to be calculated under the new Holiday Act, where holidays are taken and paid out on the basis of the work, and with (presumably) a shorter reference periods.

The [preparatory works to the new Holiday Act](#) do not specifically address the issue of calculating lost commission. It merely states that an employee is entitled to a holiday allowance for commission in the holiday year. The legislator does not intend to change the regulation. The calculation method may be addressed in future case law or perhaps in a statutory order.

The ruling is in line with the EU *aquis*.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Estonia

Summary

The new minimum wage was agreed on. The average wage is steadily increasing.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Trends in wages

Estonia generally uses two categories of wages: minimum wage which is agreed between trade unions and employers' associations. The Estonian Statistics Board publishes data on the average wage.

The Estonian Trade Unions' Confederation and the Employers' Association [have agreed](#) that the minimum wage must be equal to at least 40 per cent of the average wage.

The Estonian Trade Unions' Confederation and Estonian Employers' Association reached an agreement on a new minimum wage. The new minimum wage will be EUR 584 per month and EUR 3.48 per hour starting on 1 January 2020. According to the Estonian Employment Contracts Act, this wage must be guaranteed in case an employee is employed under an employment contract on a full-time basis.

The [average wage](#) in the third quarter in Estonia was EUR 1 397 per month and EUR 8.01 per hour. In July 2019, the average wage was EUR 1 435, in August EUR 1 365 and in September EUR 1 389. The highest average wage was paid in the information and communication sector (EUR 2 360), in finance and insurance (EUR 2 257) and in the energy industry (EUR 1 858). The lowest monthly average wage was paid in the accommodation industry (EUR 932).

France

Summary

- (I) The new French Mobility Orientation Law was issued
- (II) Several court rulings on dismissal, discrimination and the contract of employment are discussed

1 National Legislation

The French Mobility Orientation Law (*Loi d'orientation des mobilités*), presented by the Council of Ministers in November 2018 and adopted by Parliament on 19 November 2019, strengthens the rights of platform workers and offers platforms to voluntarily offer a charter of additional social rights to self-employed workers in return for the non-reclassification of the self-employed as an employee of the platform.

The Labour Law of August 2016 (No. 2016-1088) established a legal framework under which the relationship between digital platforms and workers are regulated and above all, a definition of collaborative platforms. Indeed, an 'electronic platform' is understood as a 'company that (...) puts into electronic contact a client and a worker, with the purpose of selling or exchanging a good or service' (Article L. 7341-1 of the Labour Code).

The new provisions concern workers who are 'engaged in any of the following activities: 1 Driving a transport car with a passenger; 2 Delivery of goods by means of a two or three-wheeled vehicle, motorised or not' (new Article L.1326-1 of the Transport Code).

1.1. Minimum rights

The Mobility Orientation Law introduces minimum rights and transparency obligations for platforms with regard to their self-employed workers.

The new Article L. 1326-2 of the Transport Code states that before each service is provided, the platform shall inform the workers of the distance to be covered by that service and the minimum guaranteed price they will receive after a deduction of commission costs under the conditions specified by decree.

Moreover, workers may refuse a request to provide transport services without penalty. In particular, the platform may not terminate the contractual relationship with workers on the grounds that they rejected one or more requests.

The new Article L.1326-4 of the Transport Code states that workers may choose their activity time slots and periods of inactivity and may disconnect during their activity time slots. Platforms cannot terminate the contract if a worker is exercising this right.

1.2. Content of the charter

Article 20 of the Mobility Orientation Law proposes platforms to offer additional social rights to self-employed workers through a charter.

The implementation of this charter is optional and not mandatory.

The article states that *"the platform may establish a charter determining the terms and conditions for the exercise of its social responsibility, defining its rights and obligations as well as those of the workers with whom it is in contact."*

1 *The conditions for exercising the professional activity of the workers with whom the platform is in contact, in particular the rules according to which they are put in contact with its users. These rules guarantee the non-exclusive nature of the relationship between workers and the platform and the freedom for workers to use the platform and to connect or disconnect, without time slots being imposed;*

2 *Modalities to enable workers to obtain a decent price for their services;*

3 *Methods for developing professional skills and securing professional careers;*

4 *Measures aim in particular at:*

a) *Improving the working conditions;*

b) *Preventing occupational risks workers may be exposed to as a result of their activity and damage caused to third parties;*

5 *The modalities of information sharing and dialogue between the platform and the workers on the conditions of exercise of their professional activity;*

6 *The manner in which workers are informed of any change in the conditions under which they carry out their professional activity;*

7 *The expected quality of service, the methods of control by the platform of the activity and its performance and the circumstances that may lead to the termination of commercial relations between the platform and the worker meeting the requirements of Article L. 442-1 of the French Commercial Code as well as the guarantees the worker is entitled to in this case;*

8 *The additional social protection guarantees negotiated by the platform from which workers may benefit."*

The article specifies that *"the establishment of the charter and the respect of the commitments made by the platform in the matters listed in 1 to 8 cannot characterise the existence of a legal relation of subordination between the platform and the workers."*

2 Court Rulings

2.1 Dismissal

Labour Division (Chambre sociale) of the Court of Cassation, 23 October 2019, No. 17-28.800

Factual part

Any individual dismissal must be preceded by a pre-dismissal meeting (Article L.1232-2 of the Labour Code). At the end of this meeting, the law imposes a reflection period of at least two days on the employer (Article L.1232-6 of the Labour Code). Failure to comply with this procedure constitutes an irregularity of form, but does not affect the validity of the dismissal. As far as verbal dismissals are concerned, they appear to be outside any normal dismissal procedure, and in itself justifies the absence of a real and serious cause of dismissal. Indeed, such a dismissal is, according to case law, without any real and serious cause (Cass. soc., 6 Feb. 2013, No. 11-23.738).

In case No. 17-28.800, an employee was summoned for a pre-dismissal meeting. The company's elected representatives spontaneously supported their colleague and requested a meeting with the employer. The meeting was held on 5 January, prior to the pre-dismissal meeting, during which the employer indicated that the decision to terminate the employee's employment contract was irrevocable. This statement was recorded in a report signed by 14 employees, including four members of the works council.

On 8 January, the employee was dismissed. Considering that his dismissal had no real and serious cause, the employee brought the matter before the Labour Court on the grounds that the statements made by his employer in front of his colleagues resulted in a verbal dismissal before the pre-dismissal meeting had been held, which was inherently irregular.

In his defence, the employer submitted that during the meeting with the employee representatives, he had stated that his "*approach*" was irrevocable, thus confirming his decision to continue the procedure he had initiated, without stating his ultimate decision following the preliminary meeting.

Analytical part

The Court of Appeal, confirmed by the Court of Cassation, granted the employee's request. The judges ruled that as soon as the decision to dismiss has been taken and is publicly announced by the employer before the mandatory pre-dismissal meeting, the announcement constitutes a verbal dismissal without a real and serious cause.

" Mais attendu que c'est par une interprétation nécessaire, exclusive de dénaturation, du compte-rendu de la réunion du personnel, que la cour d'appel a retenu que l'employeur avait annoncé publiquement, avant la tenue de l'entretien préalable, sa décision irrévocable de licencier le salarié ; qu'elle en a exactement déduit l'existence d'un licenciement verbal dépourvu de cause réelle et sérieuse ; que le moyen n'est pas fondé ;"

Labour Division (Chambre sociale) of the Court of Cassation, 6 November 2019, No. 18-20.909

Factual part

In this case, an employee complained that her employer had collected certificates referring to her professional incompetence during her maternity leave, which ultimately led to her dismissal.

According to the employee, the dismissal was pronounced in violation of Article L 1225-4 of the Labour Code, which prohibits an employer not only from dismissing employees during maternity leave, but also from taking preparatory measures for dismissal during maternity leave.

According to the employer, the many errors alleged against the employee could only be highlighted during her maternity leave, when her files were taken over by her replacements.

Analytical part

The Court of Appeal, confirmed by the Court of Cassation, ruled that the simple collection by the employer, as and when they were reported, of information relating to faults brought to his attention could not be considered a preparatory measure for a dismissal. The judges dismissed the employee's legal action and concluded that the dismissal was valid.

"Mais attendu qu'appréciant souverainement la portée des éléments de fait et de preuve, la cour d'appel a relevé que la simple réunion par l'employeur, au fur et à mesure de leur signalement, d'éléments relatifs aux dysfonctionnements qui étaient portés à sa connaissance ne pouvait pas être considérée comme une mesure préparatoire à un licenciement ; que le moyen n'est pas fondé ;"

Labour Division (Chambre sociale) of the Court of Cassation, 14 November 2019, No. 18-20.268

Factual part

In case No.18-20.268, the employer sent a letter after a meeting with an employee in which he criticised the employee's behaviour, giving him formal notice to change his conduct. The employee was later dismissed for professional incompetence. He brought an action before the Labour Court to contest the validity of his dismissal.

As a reminder, the same misconduct cannot be sanctioned twice by the employer (Cass.soc., 25 June 1986, No. 84-41.606). A misconduct sanctioned by a warning cannot then be sanctioned by a layoff or dismissal (Cass.soc., 9 May 2000, No. 97-43.584, Cass.soc., 30 September 2003, No. 01-40.658).

The employer argued that the letter did not constitute a disciplinary sanction.

Analytical part

The Court of Cassation noted that the employer had included specific criticisms in the letter and had invited the employee to "*urgently*" and "*radically*" change his behaviour "*without delay*" under penalty of disciplinary dismissal. Thus, the Court of Appeal correctly deduced from this that the letter constituted a warning and that the employee's conduct had indeed already been sanctioned and could therefore not justify the subsequent dismissal.

"Mais attendu qu'ayant relevé que dans son courrier du 27 juin 2014 l'employeur formulait des reproches précis à la salariée, l'invitait



"instamment" à changer "radicalement" et "sans délai" de comportement sous peine de licenciement disciplinaire, la cour d'appel en a justement déduit que cette lettre constituait un avertissement et que ces faits, déjà sanctionnés, ne pouvaient plus justifier un licenciement ultérieur, même pour insuffisance professionnelle ; que le moyen n'est pas fondé"

2.2 Discrimination

Labour Division (Chambre sociale) of the Court of Cassation, 6 November 2019, No. 18-13.235

Factual part

As a reminder, it is up to the employee to submit the factual elements of a claim on the inequality of remuneration to the judge and to the employer to provide proof of objective reasons justifying this difference in remuneration (Cass. soc., 28 September 2004, No. 03-41.825, Cass.soc., 25 May 2005, No. 04-40.169). The employer must demonstrate that objective reasons exist for the difference in remuneration between employees performing the same work or "work of equal value", the reality and relevance of which is for the judge to determine (Cass. soc., 4 February 2009, No. 07-41.406).

In case No. 18-13.235, an employee was hired on successive fixed-term employment contracts from 13 December 1999, and later on an employment contract of indefinite duration from 1 November 2001. The employee, considering that he had been a victim of unequal treatment with regard to another employee hired at the same time and performing the same functions until May 2013, brought an action before the Labour Court.

The Court of Appeal considered that the professional experience and level of education acquired by the other employee prior to the claimant's recruitment were such as to justify a faster salary increase as of 2008.

Analytical part

The Court of Cassation also rejected the claimant's request, considering that in the context of the implementation of the wage remedial plan designed to ensure equality between women and men within the company, the employer had, from 1 January 2008 onwards, increased the remuneration of the employee to whom the claimant was comparing herself to, to take account of the diplomas she earned and the previous experience she had at the time of her engagement, the Court of Appeal, which considered that the employee held diplomas that were relevant for the performance of her duties, were of a higher level than those of the claimant. The employee as also had more professional training experience, and the Court was thus able to deduce that the employer had provided sufficient proof that the difference in remuneration between the two employees during the period January 2008 to May 2013 was justified by objective and relevant factors.

"Mais attendu qu'ayant constaté que dans le cadre de la mise en œuvre du plan de rattrapage salarial destiné à assurer l'égalité entre les femmes et les hommes au sein de l'entreprise, l'employeur avait revalorisé, à compter du 1er janvier 2008, la rémunération de la salariée à laquelle se comparait l'intéressé, pour tenir compte des diplômes qu'elle possédait et

de l'expérience antérieure dont elle justifiait au moment de son engagement, la cour d'appel, qui a estimé que la salariée était titulaire de diplômes utiles à l'exercice de la fonction qu'elle occupait, d'un niveau supérieur à ceux de l'intéressé, ainsi que d'une expérience en formation professionnelle plus importante que la sienne, a pu en déduire que l'employeur rapportait la preuve que la différence de rémunération existant entre les salariés, au cours de la période de janvier 2008 à mai 2013, était justifiée par des éléments objectifs et pertinents ; que le moyen n'est pas fondé;"

Labour Division (Chambre sociale) of the Court of Cassation, 14 November 2019, No. 18-15.682

Factual part

In the present case, an employee was granted parental leave from 2 July 1998 to 23 April 2001. When she returned to work, her position was being occupied by an employee recruited to replace her. She was therefore offered to only perform subordinate tasks involving a modification of her employment contract. She brought a claim before the Labour Court, considering herself to be a victim of discrimination related to her pregnancy.

The Court of Appeal dismissed the employee's claim of discrimination, stating that although it was not debatable that at the end of her parental leave, the employee had not found her previous job or a similar job, she did not establish precise and consistent facts that were likely to suggest the existence of discrimination on the grounds of her pregnancy. Thus, there was no proof of unlawful discrimination.

Analytical part

The Court of Cassation overturned the Court of Appeal's decision. Indeed, without considering whether in view of the considerably higher number of women than men who choose to take parental leave, the employer's decision to entrust the employee upon return from her parental leave only with administrative and secretarial tasks unrelated to her previous duties as an accountant did not constitute an element suggesting indirect discrimination on the grounds of sex and whether that decision was justified by objective elements unrelated to any discrimination, the Court of Appeal did not provide a legal basis for its decision.

"Qu'en se déterminant ainsi, sans rechercher si, eu égard au nombre considérablement plus élevé de femmes que d'hommes qui choisissent de bénéficier d'un congé parental, la décision de l'employeur en violation des dispositions susvisées de ne confier à la salariée, au retour de son congé parental, que des tâches d'administration et de secrétariat sans rapport avec ses fonctions antérieures de comptable ne constituait pas un élément laissant supposer l'existence d'une discrimination indirecte en raison du sexe et si cette décision était justifiée par des éléments objectifs étrangers à toute discrimination, la cour d'appel n'a pas donné de base légale à sa décision"

2.3 Employment contract

Labour Division (Chambre sociale) of the Court of Cassation, 6 November 2019, No. 18-14.290

Factual part

The legal relationship of subordination, an essential criterion for revealing the existence of an employment contract, is characterised by *"the performance of work under the authority of an employer who has the power to give orders and directives, to control their execution and to sanction the failure of his subordinate"* (Cass. soc., 13 November 1996, No. 94-13.187).

In case No. 18-14.290, an agent had signed various contracts with a company as a self-employed agent. The agent claimed to have become an employee of the company as a commercial director in replacement of an employee and brought an action before the Labour Court.

Analytical part

The Court of Cassation agreed with the agent and considered that he had been officially introduced as an employee's replacement, and had indeed taken over his position, he had at his disposal for this purpose the company's tools, in particular an office and a secretariat, that his work was subject to control and was supervised by the company's manager, who gave him instructions and to whom he was accountable.

"Mais attendu que la cour d'appel, qui, appréciant souverainement les éléments de fait et de preuve qui lui étaient soumis, a constaté que M. V... avait été officiellement présenté comme le remplaçant de M. H..., et avait effectivement repris le poste de celui-ci, qu'il avait à sa disposition à cet effet les outils de l'entreprise et notamment un bureau et un secrétariat, que son travail faisait l'objet d'un contrôle et était encadré par le dirigeant de la société, qui lui donnait des instructions et auquel il rendait des comptes, a légalement justifié sa décision"

Labour Division (Chambre sociale) of the Court of Cassation, 6 November 2019, No. 18-19.853

Factual part

A person claimed he had been an employee of a company since January 2014 and brought an action before the Labour Court to be recognised as such.

The Court of Appeal held that the salary slips the employee produced according to which social security contributions had been deducted from February 2015 onwards were insufficient to establish the existence of an employment contract.

Analytical part

The Court of Cassation considered that the Court of Appeal, while acknowledging that the claimant had produced pay slips, which substantiated the existence of an apparent employment contract, had reversed the burden of proof and violated Articles 1315, now Article 1353 of the Civil Code and L. 1221-1 of the Labour Code.

"Attendu que pour refuser de reconnaître à M. F... la qualité de salarié, l'arrêt retient que les bulletins de salaire qu'il produit aux débats, à compter de janvier 2015 sur lesquels figuraient des prélèvements sociaux à compter de février 2015, sont insuffisants pour établir l'existence d'un contrat de travail et ne remettent pas en cause l'absence de consentement de l'intéressé à la signature d'un contrat de travail ; Qu'en statuant ainsi, alors qu'elle avait constaté que M. F... produisait des bulletins de salaire, ce dont il résultait l'existence d'un contrat de travail apparent, la cour d'appel a inversé la charge de la preuve et violé les textes susvisés"

This case law is consistent with the previous case law of the Court of Cassation, which has held that remuneration is a criterion for employee status, regardless of how it is calculated, the form of payment and its amount (Cass. Soc., 19 June 1985, No. 83-17.231, Cass. Soc., 11 June 1986, No. 84-14.471).

2.4 Execution of the employment contract

Labour Division (Chambre sociale) of the Court of Cassation, 20 November 2019, No. 18-13.697

Factual part

In this case, the employer contested a Labour Court order which stated that the vehicle registration certificate was issued in the company's name, and that he was therefore liable to pay the parking fines and reimburse his employee for the fines he had paid.

According to the employer, the person liable for the parking violations had been identified, which was an employee responsible for moving and parking vehicles the company rented to its customers. Having been identified by the company, the employer argued that the employee was liable for the offences committed by him. In addition, the employer argued that he had not given the employee express instructions to park on parking spaces that were not free of charge when no free parking spaces were available. Consequently, the company did not have to reimburse the employee.

Analytical part

The Court of Cassation rejected the employer's arguments and ruled that he had not proved that he had provided employees with instructions or memos on the procedure to be followed in the absence of free parking space, or information on the company's payment of the costs related to the professional activity for parking professional vehicles. By noting that the memo sent to the employee could be interpreted as an order to only park in free spaces and that one of the fines concerned the failure to affix an insurance certificate to the vehicle, the Court of Cassation considered that the Labour Court, which pointed out that the offences committed by the employee had been caused



on the basis of the employer's instructions or by his negligence, may have decided that he should reimburse the employee for the contraventions for which he was responsible.

"Mais attendu qu'ayant relevé que l'employeur ne démontrait pas avoir communiqué à ses salariés des instructions ou des notes de service sur la procédure à mettre en œuvre en cas d'absence de place gratuite pour stationner les véhicules qui leur étaient confiés, ni d'information sur la prise en charge par l'employeur des frais liés à l'activité professionnelle pour le stationnement des véhicules professionnels, que la note de service envoyée le 17 février 2017 au salarié pouvait s'interpréter comme une injonction de se garer uniquement sur des places gratuites, que l'un des avis de contravention concernait la non-apposition sur le véhicule d'un certificat d'assurance, le conseil de prud'hommes, qui a fait ressortir que les infractions commises par l'intéressé avaient été provoquées par les instructions de son employeur ou par la négligence de ce dernier, de sorte qu'il devait rembourser au salarié les contraventions mises à sa charge, a, sans encourir les griefs du moyen, légalement justifié sa décision"

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Germany

Summary

(I) On 13 November 2019, the Federal Ministry of Labour and Social Affairs published a draft law on Germany's implementation of the Posting of Workers Directive.

(II) On 8 November 2019, the Federal Council approved the Nursing Wage Improvement Act.

(III) The Federal Constitutional Court had held that whether an association of workers is recognised as a trade union with collective bargaining rights can be made depending on whether it has a certain degree of assertiveness vis-à-vis the employer.

(IV) According to the Federal Labour Court, an open-ended employment contract that is limited to the respective bathing season can be admissible.

(V) The Federal Government has stressed that the introduction of a clause that allows for derogations from the Working Time Act by collective agreements was agreed in the coalition agreement for this legislative period.

1 National Legislation

1.1 Posting of Workers

On 13 November 2019, the Federal Ministry of Labour and Social Affairs published a draft law on the German implementation of the Posting of Workers Directive.

The draft bill amends the existing law on the posting of workers. For example, in the newly inserted sections 2a and 2b, a definition of the term "remuneration" and a provision on the crediting of allowances is made. In accordance with the legal situation up to August 2014, section 3 extends the application of generally binding collective agreements beyond the construction industry. Sections 13b et seq. provide for the general application of generally binding collective bargaining agreements (i.e. also regional collective bargaining agreements that are not applicable nationwide) for so-called "long-term posted workers" (postings with a duration of more than 12 or 18 months, respectively). Section 24 exempts certain activities or types of activities from the application of the law. For example, working conditions should not apply to employment in Germany for a period not exceeding eight days within one year or to temporary employment (defined in a new section 24(3)) without providing work or services, e.g. meetings, negotiations, conclusion of contracts, attending expert conferences or employment for the purpose of continuing vocational training). The draft bill is available [here](#).

1.2 Wages

On 8 November 2019, the [Federal Council approved the Nursing Wage Improvement Act](#). It implements the results of the Concerted Action on Care. In order to improve the remuneration of nursing staff, the law enables the Federal Ministry of Labour to establish a collective agreement between employers and employees in the nursing sector to be generally binding. The law will now be forwarded by the Federal Government to the Federal President for signature. It will come into force the day after its promulgation in the Federal Law Gazette.

2 Court Rulings

2.1 Collective bargaining

Federal Constitutional Court of 13.09.2019 – 1 BvR 1/16 on the capacity to bargain collectively

The **Federal Constitutional Court** has held that whether an association of workers is recognised as a trade union with collective bargaining rights can be made dependent on whether it has a certain degree of assertiveness vis-à-vis the employer. This, according to the Court, is in line with the fundamental right to freedom of association. The fundamental right to a fair hearing does not guarantee a right of appeal and therefore does not preclude the limitation of a procedure to determine the ability to be heard on facts. According to this reasoning, the Court, in a decision of 22 November 2019, did not accept the constitutional complaint of an association of employees in the private insurance sector on a decision that had been regarded by the Higher Labour Court as not enjoying the capacity to bargain collectively. The decision of the Court on the capacity to bargain collectively is fully in line with earlier judgments.

2.2 Seasonal open-ended contracts

Federal Labour Court of 19.11.2019 – 7 AZR 582/17

According to the Federal Labour Court, an open-ended employment contract, which is limited to the respective bathing season, can be admissible in any event if there is no need for the worker to be employed outside the bathing season.

In the underlying case, the plaintiff had been working for the defendant municipality since 2000. According to the employment contract dated 1 April 2006, the plaintiff was hired as a full-time employee for the season from April 1 to October 31 of each calendar year. The plaintiff had since then been employed and remunerated in the months April to October of each year. The employment took place almost exclusively in the local open air bath where the plaintiff was responsible for the bath's supervision as well as with the cleaning and care of the swimming pool.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other relevant information

The introduction of a clause that allows for derogations of the Working Time Act by collective agreements has been agreed in the coalition agreement for this legislative period. This has been emphasised by the [Federal Government in its answer to a question \(19/14572\) from the AfD parliamentary group](#). The aim, according to the government's reply, is to open up the law to companies bound by collective agreements in order to test more employees' self-determined working hours and more operational flexibility in the increasingly digital world of work.

Hungary

Summary

It is for the defendant to prove that no causality exists between the alleged grounds for discrimination and the disadvantage suffered. This can be achieved by providing evidence that an employment relationship is established on the basis of educational background, professional suitability or attitude towards work.

1 National Legislation

Nothing to report.

2 Court Rulings

Published decision No. 25/2019 of the Supreme Court

Factual part

The present case relates to the regulations on the burden of proof in case of disputes involving equal treatment. The Roma plaintiff had been employed by the defendant for a fixed term and did not offer him another (open-ended) contract, despite the fact that five employees, who did not belong to the Roma community, had been hired during the same period.

Analytical part

According to Section 19 of the Equal Treatment Act (No. 125 of 2003):

(1) In procedures initiated because of a violation of the principle of equal treatment, the injured party or the party entitled to assert claims of public interest must show the probability that

- a) the injured person or group has suffered a disadvantage, and*
- b) the injured party or group possessing characteristics defined in Article 8.*

(2) If the case described in Paragraph (1) has been shown, the other party shall prove that

- a) it has observed or*
- b) in respect of the relevant relationship was not obliged to observe, the principle of equal treatment.*

The English version of the Equal Treatment Act (No. 125 of 2003) is available [here](#).

According to the Supreme Court, the decision of the Equal Treatment Authority may be used by the plaintiff to prove the existence/probability of a disadvantage compared to persons in a comparable situation, to whom the given grounds for discrimination cannot be applied (in this case, the individual's Roma origin).

At the same time, it is for the defendant (the employer) to prove that no causality exists between the alleged grounds for discrimination and the disadvantage. This may be achieved by providing evidence for a decision to establish an employment relationship based on educational background, professional suitability and attitude towards work. Therefore, the lack of causality between the employee's Roma origins and the refusal of further employment could be proven by the employer as being based on other reasons.



3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Iceland

Summary

Two cases related to dismissals are commented.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Severance payments and duty of confidentiality

Court of Appeal, No. 37/2019, 22 November 2019

In a Court of Appeal ruling of 22 November 2019 in case No. 37/2019, an employee of the company A ehf., who had worked for the company from 2005 to 2017, demanded severance pay after his resignation. The former employee was bound by an obligation of confidentiality, among other things, about business facts “he was aware of”, an obligation that continued to apply even if the employment contract was terminated. After the employee resigned from his post in 2017, A ehf. concluded a severance agreement with him, which stipulated, inter alia, that the employee was not to work for a third party during the notice period, initiate or engage in activities that could harm A ehf.’s competitive position or contact customers of the undertaking. The agreement furthermore stated that he was required to pay back the agreed payments if he violated the agreement. A ehf. terminated the severance agreement shortly thereafter. After the end of the notice period, the employee began working for A ehf.’s competitor. His former colleagues at A ehf. had recently formed that company where he became a shareholder and board member. The Court of Appeal ruled that A ehf. had not sufficiently proved that the employee had violated his obligation of confidentiality stipulated in his employment contract and severance agreement. A ehf. was therefore required to pay unpaid salaries according to the severance agreement.

The case concerned the former employee’s right to work and therefore had a constitutional connection (see Article 75(1) of the Constitution of the Republic of Iceland No. 33/1944).

The Court of Appeal ruling of 22 November 2019 in case No. 37/2019 is available [here](#).

Court of Appeal case No. 105/2019, 29 November 2019

In a **Court of Appeal ruling of 29 November 2019 in case No. 105/2019** an employee of a residence service was dismissed on the grounds of alleged physical violence towards her client. The former employee demanded the municipality to pay her damages due to unlawful dismissal. The Court of Appeal ruled that the matter had not been sufficiently explained before the decision on the termination without notice was taken. The municipality had therefore violated the duty of investigation in Article 10 of Administrative Act No. 37/1993. In addition, the Court held that the municipality had not sought more lenient remedies in light of the accusations against her. The proportionality principle had therefore not been respected in the decision and therefore violated Art. 12 of the same act. The expulsion was therefore deemed unlawful and the former employee awarded reparations as well as punitive damages.



3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Ireland

Summary

The General Scheme of a Bill to consolidate and amend the employment permits legislation has been published.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

The Minister for Business, Enterprise and Innovation has published the [General Scheme of a Bill](#) to consolidate and amend the Employment Permits Acts 2003–2014 and a [Regulatory Impact Assessment](#). The Minister considers it necessary that the Acts be consolidated and restructured in order to update provisions for the employment permits schemes in line with policy and economic developments since 2014; provide the flexibility to deal with the changing labour market, work patterns and economic development needs which require a rapid response; and provide for a robust, transparent and adaptable employment permits regime.

These changes would allow the economic migration system to implement the recommendations set out in the Department's [Review of Economic Migration Policy 2018](#). Appearing before the Joint Oireachtas Committee on Business, Enterprise and Innovation, departmental officials told the committee that workers from outside the EEA will be allowed to come to Ireland to work each year in seasonal sectors such as fruit picking, for periods of four to nine months before returning home. Employers in qualifying sectors who sought to avail of the new scheme would have to indicate the wage they intend to pay their seasonal workers and how they proposed to help in terms of providing them with accommodation and flights. More information is available [here](#).

Italy

Summary

On 31 October 2019, the Italian Parliament converted Decree Law of 3 September 2019, No. 101, into law, providing for urgent measures on work protection. The act has been published in the Italian Official Journal as the Act of 2 November 2019, No. 128.

1 National Legislation

On 31 October 2019, the Italian Parliament converted Decree Law of 3 September 2019, No. 101, into law, providing for urgent measures on work protection. The act has been published in the Italian Official Journal as the Act of 2 November 2019, No. 128.

Since the 1970s, the Italian legislator has undertaken efforts to establish protection for self-employed workers.

According to Article 2222 c.c., self-employment refers to persons who agree to perform work or to provide a service against remuneration, mainly through personal work and without being subordinated to the customer. In 1973, Article 409 No. 3 of the Civil Procedure Code extended the new Title IV (Rules on Labour Disputes) to all collaborative relationships that are characterised by continuous and coordinated work that is mainly personal, albeit not subordinated. The amendment of Art. 409, No. 3, Act 81/2017 states that collaboration is coordinated when, in compliance with the coordination methods established by the parties, the collaborator independently organises his or her work activity. The improper use of collaborations to disguise subordinate employment relationships, led to the establishment of project work contracts in 2003, the regulation of which has undergone various modifications to prevent their fraudulent use.

Legislative Decree No. 81/2015 abolished project work and provided that any work relationships in which work is primarily performed personally and continuously and is organised by the client, subordinate work protection applies.

The legislator therefore distinguishes the notions of independent work under subjection to the power of the employer as typical elements of an employment relationship, and the individual organisation of work, which are characteristic of certain forms of self-employment, in which autonomy is attenuated, since the client organises the activity of the (autonomous) collaborator. In this case, the specific protection of subordinate employment applies. Further to these types of work, there is real self-employment, where the worker organises his or her own work independently or by mutual agreement with the client (coordinated autonomous collaboration).

Most recently, Act 2 of November 2019, No. 128 amended the provisions on collaborations organised by the client and introduced a specific regulation for employment relationships on the delivery of goods in urban areas (so-called riders).

Article 1 modifies Article 2 of Legislative Decree No. 81/15, providing that subordinate work protection also applies when the collaboration is "predominantly" but not "exclusively" personal. Therefore, the absolute 'individuality' of the service established in the contract is no longer a determining element for the application of protection, the mere prevalence of the personal element is sufficient.

The reference to the time and place of performance of the service has been erased from the text as determinant elements for the purpose of qualifying the contract. Consequently, the individual organization of work is assessed as a whole, regardless of working time and place.

The provision specifies that subordinate work protection also applies if the organisation of workers who are considered self-employed is based on digital platforms. The platform is not the employer or the client, but only the technical tool through which the methods of the performance of the service are defined.

Following the introduction of Article 2 of Legislative Decree No. 81/15, Art. 2-*bis* was inserted, which extends some social security protection to those enrolled in the INPS "Gestione separata", who are not eligible for a pension and are not enrolled in other obligatory social security schemes. It provides that these workers must have at least one month of contributions—instead of three as previously required—in the "Gestione separata" within the 12 months preceding the date of the event from which the right to compensation arises. These benefits include daily sickness allowance, hospitalisation allowance, maternity leave and parental leave.

Furthermore, the hospitalisation allowance is increased by 100 per cent and the daily sickness allowance has also been raised for collaborators who fulfil the requirements. The hospitalisation allowance is paid at a rate of 16 per cent, 24 per cent or 32 per cent of the amount obtained by dividing the contribution ceiling of the year in which hospitalisation starts by 365, on the basis of the contribution of the 12 preceding months (16 per cent between one and four months, 24 per cent between five and eight months and 32 per cent between nine and 12 months). On the other hand, sickness allowance is paid at a rate of 8 per cent, 12 per cent and 16 per cent of the amount obtained by dividing the contribution ceiling for the year in which the illness begins by 365, on the basis of the contribution paid in the 12 months preceding the illness (8 per cent between one and four months, 12 per cent between five and eight months and 16 per cent between nine and 12 months).

Following Article 47 of Legislative Decree No. 81/2015, a Chapter V-*bis* was included, entitled "Protection of work via digital platforms", with Articles from 47-*bis* to 47-*octies*.

According to Article 47-*bis*, Chapter V-*bis* does not apply to all forms of work through a digital platform, but only to self-employed workers who carry out activities such as goods deliveries on behalf of others in urban areas by bicycle or motor vehicle (riders), who also (but not exclusively) use digital platforms to find assignments.

The law defines digital platforms as software used by customers to order the delivery of a service, to set the rider's remuneration and to determine how the service will be performed.

Article 47-*ter* imposes the written form *ad probationem* for contracts of riders and requires the workers to be adequately informed about their rights and the health and safety regulations. Failure to comply with this duty of information is a violation of Legislative Decree No. 152/1997, implementing Directive 91/533/EEC, on the employer's obligation to inform the worker about the conditions applicable to the contract or employment relationship. In view of the replacement of Directive 91/533/EEC by Directive 2019/1152/EU of 20 June 2019 on transparent and predictable working conditions in the European Union, starting from 1 August 2022, the information to be provided will in any case be that contained in Chapter I, although the legislator does not specifically mention this.

According to Article 4 Legislative Decree No. 152/1997, the worker can contact the Provincial Labour Office which can order the employer to provide the necessary information to the worker within 15 days. If the employer does not comply with the order, the worker is entitled to compensation that cannot exceed the remuneration received in the last year and which must be determined on the basis of the severity and duration of the violation and the conduct of the parties.

The violation of the formal requirements and of the communication duty is useful for substantiating the actual conditions applied to the relationship and the infringement of the worker's rights.



Article 47-*quater* provides that riders' pay can be determined by national collective bargaining, involving the comparatively more representative trade unions at national level. By defining pay, collective bargaining and certain agreements must take into account the methods of service provision and the client's organisation.

In the absence of collective bargaining and certain agreements, workers cannot be paid by unit and must have a minimum hourly wage that takes into account the wage fixed by collective agreements in similar sectors. Workers are also entitled to a supplementary indemnity, not less than 10 per cent of the regular wage, for work carried out at night or on holidays or under adverse weather conditions. The amount of indemnity is fixed by collective bargaining or, in the absence of collective bargaining, by a decree of the Ministry of Labour. This was adopted by the legislator in clear contrast with the jurisprudence of the EU Court of Justice, according to which a collective labour agreement containing minimum rates for self-employed workers who carry out the same activity as the other employees, lies outside the scope of Article 101 TFEU (and therefore does not conflict with competition law), only where such workers are "bogus self-employed workers", i.e. workers who are in the same situation as regular employees. Since the legislator has explicitly qualified riders as "real" self-employed workers, the regulation alone of the criteria for determining the total remuneration by collective agreement is difficult to reconcile with the Court's statements.

The provisions on the remuneration of riders will apply as of November 2020.

Article 47-*quinquies* extends anti-discrimination law and the guarantee of worker's freedom and dignity, foreseen by subordinate work protection regulations, to riders. The refusal of a rider to accept a request for a delivery of services does not justify his or her exclusion from the platform, nor a reduction of job opportunities.

According to Article 47-*sexies*, the personal data of platform workers must be processed in compliance with the regulations of personal data processing.

Article 47-*septies* regulates insurance protection, establishing compulsory insurance coverage against accidents at work and occupational diseases. The insurance premium must be established on basis of the degree of risk associated with the performed activity. The minimum daily rate envisaged for social security and welfare contributions (for 2019, EUR 48.74, based on the INPS Circular Letter No. 6 of 25 January 2019) is considered taxable remuneration in relation to the days of actual activity. The standard refers to d.P.R. 1124 of 1965, on mandatory insurance against accidents at work and occupational diseases, to which the client who uses the platform is fully bound. He or she is also required to comply with Legislative Decree 81/2008 on health and safety at work.

The insurance regulations will apply from February 2020.

Article 47-*octies* establishes a supervisory department at the Ministry of Labour and Social Policies to monitor the application of the new law. The supervisory department is chaired by the Minister of Labour or by a delegate and is composed of representatives of workers and employers appointed by the most representative trade union organisations. The members of the supervisory department are not entitled to any compensation and its functioning shall not entail any additional charges for public funds.

With reference to the employer's duty of communication, following Article 3 of Legislative Decree No. 81/2015, Article 3-*bis* was inserted, according to which all communications from the employer relating to the hiring, transformation and termination of the employment relationship shall be transmitted electronically to the Ministry of Labour, which will forward the information to Anpal, INPS and INAIL.



2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Latvia

Summary

(I) Parliament has adopted legislative amendments on a number of labour laws due to a reform of the legal regulations on administrative violations.

(II) The decision of the CJEU in joined cases C-609/17 and C-610/074 has no implications on Latvian law.

1 National Legislation

1.1 Legislative amendments

On 17 October 2019, Parliament (*Saeima*) adopted amendments of a number of laws, in particular, the [Labour Law](#), the [Law on Information and Consultation of Employees in EU-scale Undertakings and EU-scale Groups of Undertakings](#), the [Law on Involvement of Employees in Decision Making in the Event of Cross-border Mergers of EU-scale Cooperative Societies and EU-scale Undertakings](#), the [Strike Law](#), and on 31 October 2019, amendments to the [Labour Protection Law](#). The respective amendments will enter into force along with the new [Administrative Liability Law](#) on 1 January 2020.

The respective amendments 'transfer' the provisions on administrative violations, sanctions (warnings and fines) as well as the competent authority for the application of such administrative sanctions (the labour inspectorate is responsible in case of violations of the respective laws) from the [Administrative Violations Code](#) to specific laws regulating the respective aspects in their substance.

This is the result of a reform of the system on the legal regulation of administrative violations. On 25 October 2018, Parliament adopted a new legislative act - the [Administrative Liability Law](#). This law amended and made the regulations on administrative violations more efficient and clear. Both substantive and procedural provisions of administrative violations had been regulated by the [Administrative Violations Code](#). The new system envisages the substantive provisions on particular administrative violations and the competent authorities for the application of administrative fines to be regulated by very specific laws, but for the procedure (application of administrative fines, the system of appeal, etc.) to be regulated by a separate law - the [Administrative Liability Law](#), which will enter into force on 1 January 2020.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 Annual leave

CJEU joined cases C-609/17 and C-610/17, TNS, of 19 November 2019

The procedure on the right to use paid annual leave is regulated in [Article 150 of the Labour Law](#). Article 150(6) provides that in case of incapacity for work due to sickness during the period of paid annual leave, the latter can be extended or taken another time. This implies that, in principle, it depends on the mutual agreement between the employer and the employee as provided in Article 150(1) of the Labour Law. There is no information available whether there is any collective agreements (on the level of an



undertaking) providing for a specific period of time when the right to paid annual leave should be used. There is no explicit norm allowing the regulation of periods of annual leave by collective agreement.

Therefore, it may be concluded that the CJEU's decision has no implications for Latvian law.

4 Other relevant information

Nothing to report.

Lithuania

Summary

The Lithuanian Supreme Court has asserted that due to the particularities of the work regime, the working time of mobile workers (lorry drivers working on international routes) in excess of the daily maximum working time (8 hours) shall not be considered working time, for which extra pay should be granted, if there is no proof that the employer has specifically ordered the driver to work extra hours. However, the Court's position on additional payment for work on rest days (Saturday and Sunday) and work on public holidays is quite restrictive – the employer must provide evidence that he/she undertook active measures to ensure that the workers' working time complies with the statutory provisions on working time.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working Time

Supreme Court, case e3K-3-359-701/2019, 27 November 2019

In the landmark case on working time of mobile workers, the Supreme Court of Lithuania analysed the patterns of working time of lorry drivers working on international routes. These patterns make the drivers vulnerable, as in most cases, the drivers determine their own working time regime independently and are paid in advance on an agreed basis. The dismissed lorry driver in the present case claimed additional payment for overtime, during rest periods and on public holidays. The courts of lower instance had dismissed the claims on the ground that mobile workers are generally subject to the specific rules established by the government and not to the general provisions of the Labour Code – they determine their own working hours and the employer is not required to provide for an extra payment for possible deviations from normal working patterns, unless it is proven that he/she specifically ordered the driver to work overtime or during his/her rest periods. The Supreme Court upheld this decision only partially. It agreed that overtime work is too difficult to measure and that the burden of proof lies with the employer, but imposed a stricter standard on possible work on rest days and public holidays. The employer shall be relieved from the duty to provide for an extra payment for work performed on rest days and public holidays only if he/she has fulfilled the following obligations:

- 1) to inform the mobile worker of the working and rest period requirements applicable to him/her as a driver;
- 2) to ensure that the mobile worker's work schedule complies with the prescribed statutory working and rest period requirements;
- 3) to continuously monitor the mobile worker's compliance with the applicable work and rest period requirements;
- 4) to properly respond to identified breaches of working time and rest period requirements, i.e. to eliminate identified infringements and take preventive measures to ensure that no new infringements occur.

Compliance with these obligations shifts the burden of proof to the employee when claiming additional payment for work performed on rest days and public holidays.



3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Norway

Summary

The Appellate Court has issued a ruling concerning definition of working time. Travel time of an employee was considered working time.

1 National Legislation

Nothing to report.

2 Court Rulings

Appellate Court, LE-2019-19773, 29 October 2019

On 29 October 2019, the Appellate Court ruled in a case concerning the definition of working time (LE-2019-19773). The case concerned an employee (service technician) at Coca-Cola Norway and the travel time from the home to the first customer before 08.00 in the morning and travel time after 16.00 in the afternoon from the customer to the employee's home. The court found that the travel time was working time according to the definition of the Working Environment Act (WEA) chapter 10, section 10-1. The Court based its interpretation on the advisory opinion of the EFTA-Court E-19/16 and the EU-Courts opinion in case C-266/14 regarding the Working time Directive 93/104/EC. The Court did not find that the working time was entitled to pay, neither according to the WEA nor according to the collective agreement (Bryggerioverenskomsten med særavtale).

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Poland

Summary

On 15 November, the new Law on Work on Fishing Vessels took effect. The Law transposes Directive 2017/159 to implement the Agreement concluded by the European Social Partners on the implementation of the ILO's Work in Fishing Convention.

1 National Legislation

1.1 Work on fishing vessels

On 13 November, the Law of 11 September on Work on Fishing Vessels (*ustawa o pracy na statkach rybackich*) was published (Journal of Laws 2019, item 2197), and took effect on 15 November 2019.

The aim of the Law is to transpose Council Directive No. 2017/159 of 19 December 2016 implementing the agreement on the implementation of the 2007 Work in Fishing Convention of the International Labour Organization, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (*Cogeca*), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (*Europêche*). The new Law covers not only matters addressed by Directive 2017/159. This legal act comprehensively regulates the living and working conditions on fishing vessels, as well as the employment of fishermen. Under previous regulations, the abovementioned issues were subject of the Law of 5.8.2015 on Work at Sea (*ustawa o pracy na morzu*) (Journal of Laws 2018, item 616, with further amendments). These provisions did not, however, provide effective protection for fishermen.

1.2 Scope of the Law

Article 1 item 1 of the Law on Work on Fishing Vessels determines the scope of application of the Law. The new legal act regulates:

- The rights and duties of the parties to the employment relationship on Polish fishing vessels,
- Job placement for candidates looking for a job on fishing vessels
- Requirements concerning documents relating to work on fishing vessels
- Working and living conditions on Polish fishing vessels
- Health and social protection of fishermen.

Article 1 item 4 provides that the provisions of the Labour Code should apply to work on fishing vessels to the extent that they are not regulated by the Law.

From the perspective of EU law, the following matters should be emphasised in particular (mentioned below).

1.3 Fishermen's work agreement

Fishermen should be employed under a fishermen's work agreement (Articles 8 – 13 of the Law). Such an agreement can be concluded for an indefinite duration, for a fixed term, or for the period of a particular sea voyage. A fisherman's work agreement for

vocational training can be concluded with a young person. Any contract must be concluded in writing, in electronic or paper form.

The content of the fisherman's work agreement is determined by Article 9 of the Law. The agreement should stipulate:

- The fisherman's family name, date and birthplace,
- The name and seat, or name and family name and an address of the owner of the vessel,
- Type of work agreement and the date when it was concluded,
- The name of the fishing vessel and/or its registration number,
- Work and remuneration conditions, in particular, the job position of the fisherman, remuneration for work and its components, the minimum rest periods, the extent of annual leave or the method of its calculation, the place and date of commencement of work, the conditions of the agreement's termination, reference to the collective labour agreement, if applicable
- Other benefits (e.g. health care, social security coverage, conditions of repatriation).

Moreover, the owner of the vessel should provide information on the procedure to lodge a complaint, including the contact data of the institution in charge (Article 10 of the Law). A fisherman's work agreement can be terminated according to the conditions provided by the Labour Code (Article 11 of the Law), with some possibilities of adding some extensions to the agreement, e.g. when it is necessary to complete the sea voyage (Article 12). Conditions of remuneration for work and other work-related benefits should be stipulated by a collective labour agreement, workplace regulation or—if the abovementioned acts do not apply—by a fisherman's work agreement.

1.4 Working time

The working time of fishermen is regulated in Article 17 – 21 of the Law.

Working time refers to the time a fisherman is required to perform his duties according to the fisherman's work agreement and any time crew gatherings, trainings or exercises take place. Work on Sundays and public holidays is allowed (Article 17 of the Law).

The average working time on a fishing vessel may not exceed 48 hours per week, on average, within a reference period of no longer than 12 months. The maximum working time should not exceed 14 hours in a 24-hour period and 72 hours per week. The minimum rest period may not be shorter than 10 hours within a 24-hour period and 77 hours per week (Article 18 of the Law).

The rest period within a 24-hour period can be divided into no more than two periods, one of which may not be shorter than 6 hours, and the interval between two consecutive periods should not exceed 14 hours. If the abovementioned rules are violated, a fisherman should immediately be granted an equivalent rest period (i.e. the working time should be shortened). In such a situation, the fisherman should be entitled to full remuneration for work. The skipper should order crew gatherings, trainings or exercises in such a manner that they interfere with rest periods as little as possible, and should not be the cause for overtime (Article 19 of the Law).

Any work performed in excess of the standard working time as well as work in excess of the extended working time resulting from the schedule of working time the employee is bound by, constitutes overtime work. Overtime work is allowed when it is necessary to ensure the safety of the vessel, the people aboard or the catch, as well as when it is necessary to provide assistance to other ships or vessels in emergency situations. An equivalent rest period for the overtime work should be provided. In certain situations, the owner of the fishing vessel can require the fishermen to be ready to work (stand-by

period), i.e. when it is necessary to secure the vessel's operations (Article 20 of the Law)

Should the vessel be in danger, or a rescue mission be carried out, the fisherman is required to perform any work entrusted by the skipper. Immediately after the mission, the fisherman should be provided an equivalent rest period (Article 21 of the Law).

1.5 Young persons

According to Article 190 of the Labour Code, a young person is someone who has reached the age of 15, but is not yet 18. However, according to Article 3 item 1 of the Law on Work on Fishing Vessels, it is admissible to employ a young person who has reached the age of 16, solely for the purpose of vocational training. It is also admissible to employ an apprentice to provide him with practical experience on the fishing vessel. In principle, however, the minimum age of persons employed on fishing vessels is 18 years of age (Article 3 item 1 of the Law).

Article 22 of the Law on Work on Fishing Vessels provides that the working time of a young person cannot exceed 8 hours within a 24-hour period and 40 hours per week. A young person cannot perform work at night, i.e. in a period of 9 consecutive hours, including the period between 24.00 and 5.00 a.m. Exceptions are allowed when required by the necessity to complete vocational training, as provided by regulations on safety at sea. Subsequently a young person should be provided an adequate rest period that amounts to work performed at night or overtime work.

A young person can only perform overtime work when the fishing vessel is in danger. A young person should be granted meal breaks, including at least a one-hour meal break per day, and a 15-minute break after every two-hour work period. In any case, work performed by a young person may not be dangerous for his life, health or psychological development.

1.6 Repatriation

Article 23 of the Law provides that in case of employment on a ship that sails to foreign destinations, the fisherman is entitled to free repatriation, when the fisherman's work agreement has expired; in case of a loss, sinking of a vessel, etc., or an interval of at least one month before the vessel is in use again; the fisherman left the vessel due to disease or an accident at work; if the fishing vessel is diverted to a war zone after the commencement of the journey and the fisherman did not express consent to this change.

The fisherman is also entitled to free repatriation when the owner of the vessel terminates the fisherman's work agreement, unless the fisherman committed serious breach of basic employee duties (collective agreement, workplace regulations or a work agreement can stipulate otherwise). If the fisherman has resigned due to justified reasons, he is also entitled to free repatriation.

The owner of the vessel should bear the costs of repatriation (Article 24 of the Law). Further entitlements can be stipulated in the collective labour agreement or workplace regulations, and—if no such acts do not apply—in a fisherman's work agreement (Article 25). The owner of the vessel cannot demand advance payment for repatriation costs from the fisherman, or deduct those costs from his remuneration (Article 26).

The relevant Maritime Office should organise the repatriation, should the owner of the vessel fail to do so, or if the owner does not bear the costs. The Maritime Office can request the vessel's owner to reimburse the costs (Article 27).

The Law on Work on Fishing Vessels took effect on 15 November 2019.



The text of the Law on Work on Fishing Vessels can be found [here](#).

The information on the legislative process and the substantiation of the draft can be found [here](#).

The Law of 5.8.2015 on the Work at Sea can be found [here](#).

The Labour Code can be found [here](#).

Analytical part

The Law on Work on Fishing Vessels is the first statute that concerns the employment conditions of fishermen and introduces specific provisions on the status of this occupational group. The Law also regulates labour market services as well as health and safety issues.

It goes without saying that the necessity to transpose Directive 2017/159 was the major incentive to enact the abovementioned Law. In the present reporter's view, the matters covered by Directive 2017/159, i.e. the content of a fisherman's work agreement, working time and rest periods of fishermen, employment of young persons with the purpose of vocational training, as well as the repatriation of fishermen to their home country has been adequately transposed.

It remains to be seen how the Law will be implemented in practice. It seems, however, that the protection of fishermen has been substantially strengthened. In general, the Law on Work on Fishing Vessels should be evaluated positively.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Portugal

Summary

Decree Law No. 167/2019, of 21 November, approves the minimum monthly guaranteed wage for 2020.

1 National Legislation

1.1 Monthly minimum wage for 2020

Decree Law No. 167/2019 of 21 November approves an increase of the minimum monthly guaranteed wage to EUR 635 from 1 January 2020.

This reflects the government's aim of reaching a minimum monthly guaranteed wage in the amount of EUR 750 by 2023.

This decree law will enter into force on 1 January 2020.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

Nothing to report.

Romania

Summary

The government has adopted some protective measures for employees who have been made redundant following collective dismissals in the mining sector.

1 National Legislation

1.1 Compensatory payments for collective redundancies

Emergency Ordinance No. 69/2019 on the application of social protection measures provided to employees who have been made redundant through a collective dismissal based on lay-off plans of the operator of coal mines for which approval of state aid has been granted for the closure of non-competitive coal mines during the period 2019-2024, published in the Official Gazette of Romania No. 921 of 14 November 2019, provides for a series of protective measures for persons made redundant following collective dismissals in the mining sector.

The social protection measures will be granted to persons made redundant as a result of the programme to close and green coal mines authorised by the European Commission. The collective redundancies will be based on a lay-off plan, which includes:

- a) the total number of employees on the date of the drafting of the plan;
- b) the reasons for the application of the measures in the lay-off plan;
- c) the number of employees required to carry out the activity following the application of the measures in the lay-off plan;
- d) the number of employees who will be affected by the collective redundancy;
- e) the date from which or the period in which, according to the law, the collective redundancies will take place.

Persons employed for at least 36 months before the date of dismissal shall benefit from compensatory payments granted by the operators of the mine, from their revenue and expenditure budgets, in accordance with the provisions of the applicable collective labour agreements or individual employment contracts, as well as a monthly supplementary income.

The supplementary income is granted on a monthly basis for different periods, depending on the seniority of the employee dismissed under the provisions of this emergency ordinance, as follows:

- a) 12 months for employees with between 3 years and 10 years of service;
- b) 20 months for employees with between 10 years and 15 years of service;
- c) 22 months for employees with between 15 years and 22 years of service;
- d) 24 months for employees with at least 22 years of service.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.



4 Other relevant information

Nothing to report.

Slovenia

Summary

(I) The report covers the Act Regulating Measures Relating to Wages and Other Labour Costs for 2020 and 2021 and Other Measures in the Public Sector and Extraordinary Adjustments of Pensions.

(II) Information on the so-called mini pension system and labour market reforms is also provided and on the reinstatement of the social dialogue within the Economic and Social Council.

1 National Legislation

1.1 Wages

On 21 November 2019, the *Act Regulating Measures Relating to Wages and Other Labour Costs for 2020 and 2021 and Other Measures in the Public Sector and Extraordinary Adjustments of Pensions* was adopted by the National Assembly of the RS. The Act intends to make it possible for the national budgets of 2020 and 2021 to be realised smoothly. It aims to ensure support for public finance and macroeconomic stability and stable economic development. The Act provides the amount of compensation officials shall be entitled to in 2020 and 2021 in case of absence from work due to illness or injury not connected with their work, the way in which the anniversary bonus shall be paid out in the public sector, the limitations of job performance payments of civil servants and officials, the limitations on the agreements related to increased amounts of work of civil servants and the extraordinary adjustment of pensions in 2020. The National Council of the RS has vetoed the Act (main reason: opposition to the way in which the adjustment of pensions in 2020 should be carried out). The voting in the Assembly will be repeated in early December.

On 29 November 2019, amendments to the *Pension and Invalidity Act* and to the *Labour Market Regulation Act* (see July 2019 Flash Report) were enacted. The texts of the two Acts is not available in the Official Gazette. No information on the substance of the amendments can be reported yet. From the labour law perspective, it is important that the amendments on the double status of pensioners have been adopted.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Social dialogue

As reported in the September Flash Report, the social dialogue within the Economic and Social Council has been interrupted. The representatives of the employers' association as well as the chairperson of the Council, at that time the trade union representative, resigned in protest against how social dialogue was being carried out (some acts had



been submitted to the parliamentary procedure and enacted by Parliament without having previously been discussed in the Economic and Social Council).

In its session on 22 September, the members of the Economic and Social Council agreed on new rules regarding an improved social dialogue (Official Gazette of the RS, No. 69/2019). The rules cover the clearly defined competences of the Council, the organisation of work of the Council and the possibility to establish a bargaining body if the Council has to make a decision on a special and very important issue. According to the rules, the Council shall be competent to discuss draft acts, even when they are not submitted to Parliament by the government but by the individual (non-coalition) parliamentarian parties.

It is expected that the rules will contribute to the better functioning of the Council and to more stable social dialogue.

Spain

Summary

New general elections were held on 10 November, but there is no new government yet. An interesting Constitutional Court ruling was issued on dismissal for objective grounds.

1 National Legislation

1.1 Employment of disabled persons

Factual Part

This [Ministerial Decree](#) includes the obligation of the State to grant additional financing to the regions for the better functioning of special employment centres for disabled persons.

Analytical Part

Following the guidelines of the European Union in the area of employment, one of the priorities of the Spanish State is support for the employment of disabled persons and for that purpose, special employment centres have been created, which are companies whose aim is to give employment opportunities to people with disabilities. These centres receive financial support from the general State budget for their creation and maintenance. The regions participate in the management of this financial assistance.

1.2 Record of working time

Factual Part

This [agreement on the centres and services for persons with disabilities](#) empowers the company to freely determine the recording system of the working day after consultation with the workers' representatives, although it imposes some mandatory requirements or guidelines on the employer. Among them is the need to attend to cases in which the work is carried out based on hours of entry and exit other than those generally established or in a place other than the usual workplace. The agreement also requires taking into account those cases in which the worker performs his/her activity outside the usual workplace on behalf of the company, or situations in which the work day is reduced because the worker is applying his/her rights aimed at reconciling work and family life. The privacy of the worker must be respected.

Analytical Part

Royal Decree Law 8/2019 requires employers to record working time. Companies now have the obligation to maintain daily records of working time, indicating the start and end times of the work day of each worker. The main purpose is to control compliance with the rules on overtime and to prevent abuse. The terms of compliance with this obligation can be specified through collective bargaining. This is new, following the example reported in the previous Flash Report for the education sector.

1.3 Working time in the transport sector

Factual Part

The [government permitted](#) non-compliance with the rules on driving and rest periods in the goods and passenger transport operations by road between 11 and 13 November in the territory of Barcelona and Girona (Catalonia) and Guipúzkoa (Basque Country).

Analytical Part

This measure is covered in Article 14.2 of Regulation (EC) 561/2006 and addresses the exceptional circumstance on those dates in the territorial area of Catalonia (and part of the Basque Country), which seriously affected traffic and the free movement on certain roads, with negative effects on national supply, economic activity and the mobility of people.

2 Court Rulings

2.1 Dismissal due to absenteeism

Constitutional Court, No. 118/2019, 16. October 2019

Factual Part

[According to the Constitutional Court](#), the type of dismissal that allows the employer to terminate the employment contract for repeated absences of the worker, even if they are justified, is not contrary to the fundamental rights to health and physical integrity and is not discriminatory.

Analytical Part

Article 52 of the Spanish Labour Code, which concerns terminations of the employment contract on objective grounds, provides in paragraph (d):

'The contract may be terminated:

...

(d) for absences from work, albeit justified but intermittent, that amount to 20% of working hours in two consecutive months provided that total absences in the previous 12 months amount to 5% of working hours or 25% of working hours in four non-continuous months within a 12-month period.

The following shall not be counted as absences from work for the purposes of the previous paragraph: absences due to industrial action for the duration of that action, acting as a workers' representative, industrial accident, maternity, pregnancy and breastfeeding, illnesses caused by pregnancy, birth or breastfeeding, paternity, leave and holidays, non-industrial illness or accident where absence has been agreed by the official health services and is for more than 20 consecutive days or where absence is caused by the physical or psychological situation resulting from gender-based violence, certified by the social care services or health services, as appropriate.

Nor shall absences for medical treatment for cancer or serious illness be counted.'



Before the labour reform of 2012, this very Article required the employer to take into account the total absenteeism in the company, but since the reform, dismissal is based exclusively on individual absences.

The [CJEU Ruiz Conejero ruling](#) warned that absences from work due to sickness attributable to a disability suffered by that worker should not be taken into account. This ruling affected the interpretation of that Article, but there has been no legal reform.

The purpose of this Article is to facilitate the dismissal of workers who frequently miss work, with short-term absences, but repeated or intermittent absences. These absences are mainly due to illnesses.

The Constitutional Court concluded that this cause for dismissal is not contrary to the Spanish Constitution. Although the law allows the employer to fire workers for illness or for health-related reasons, the measure is justified to safeguard productivity and the proper functioning of companies, an objective that the legislator must protect due to the demands of Article 38 of the Constitution, which recognises the freedom of enterprises.

According to the Constitutional Court, not every entrepreneurial measure that may be connected to the worker's health can be considered harmful to the constitutional right to physical integrity or health, because there is not always directly targeted at the worker's health. On the other hand, the right to work does not prevent the employment contract from being terminated for reasons that the legislator understands are justified, provided they have some constitutionally acceptable basis, as is the case with the legitimate interests of the company and the safeguard of productivity.

Finally, the Constitutional Court considers that the measure respects the proportionality between the interests of the worker and the employer, and refers to the CJEU Ruiz Conejero judgment to rule out discrimination in this type of dismissal, discrimination, by the way, that several members of the Court defend in a dissenting opinion.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Increasing unemployment rate

Unemployment increased to 98 000 people in October. Some economic indicators show a reduction in growth that may affect employment.

4.2 Trade unions

Inditex has agreed with the unions to create a global union committee. It is the first time that a multinational has created a committee of this type.

Sweden

Summary

The model of coordinated wage negotiations, which has been in place for 20 years, is under scrutiny since the union for municipality blue collar workers are leaving the coordination of the trade union federation, *LO*.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

Nothing to report.

4 Other relevant information

4.1 Wage negotiations for 2020

The Swedish wage negotiations for 2020 are currently being negotiated and the model of well-coordinated, standardised negotiations based on the competitiveness of the internationally exposed industrial sector has come under some scrutiny. The model, which has been generally accepted by the collective partners since 1997, which allows the internationally exposed industrial sector to lead the wage negotiations, has resulted in significant stability on the labour market in combination with a sustainable income increase over the past 20 years, except for the disturbance caused during the financial crises in 2009-2010. The large trade union for municipality blue collar workers, *Kommunal*, has decided to break away from the coordination through the overarching blue collar workers' union federation, *LO*, to better promote more significant wage increases for their members. *Kommunal* unionises child care workers, assistant nurses and similar workers in the local municipality sector. A minority of these workers are women.

United Kingdom

Summary

TUPE and definition of employee

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU rulings and ECHR

3.1 TUPE

The most interesting case decided this month, although only a decision of the Employment Tribunal, is [Dewhurst v. Revisecatch Ltd t/a Ecourier](#) ET2201909/18 (26 November 2019), where in a carefully reasoned judgment, the ET said so called 'limb (b) workers under s.230(3)(b) ERA workers should also be covered by TUPE 2006 (Transfer of Undertakings (Protection of Employment) Regulations 2006). It will be recalled that Article 2(1)(d) of the Directive 2001/23 defines employee as 'any person who, in the Member State concerned, is protected as an employee under national law. Article 3(2) makes reference to 'employment relationship'. This persuaded the tribunal judge to say that the term includes those covered under the Equality Act 2010, which includes limb (b) workers. (see paras. 55-57). This judgment has not formal precedential value but is well reasoned and is widely reported. It is likely to be appealed.

4 Other relevant information

Nothing to report.

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