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April 2022

Summary and country reports

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

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Flash Report 04/2022 on Labour Law

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Executive Summary

National level developments

In April 2022, the extraordinary measures associated with the COVID-19 crisis played a relatively lesser role in the development of labour law in many Member States and European Economic Area (EEA) countries compared to previous months.

This summary is divided into two parts: the first provides an overview of developments relating to the COVID-19 crisis measures, while the second sums up other labour law developments with particular relevance for the transposition of EU labour law.

Developments related to the COVID-19 crisis

In April 2022, only few countries still had measures in place to contain the spread of the COVID-19 virus in the workplace.

Only in **Portugal** has the state of emergency been extended until 05 May 2022. However, several COVID-19 related restrictions have been removed, and only apply in exceptional situations.

Similarly, in **Cyprus** and **Norway**, the majority of anti-COVID measures have been abolished.

However, some measures remain in place in countries such as **Croatia** and **Slovenia**, where employees in the healthcare and social assistance sectors are required to wear facemasks and undergo periodical mandatory testing.

In **Italy**, the Minister of Health provided guidelines for the recovery of social and economic activities.

Measures to alleviate the financial consequences for businesses and workers

To alleviate the adverse effects of the COVID-19 crisis, measures to support companies and employees affected by the COVID-19 emergency continue to apply in some countries.

In **Ireland**, legislation has been enacted to ensure that employees' redundancy payments are not affected by them being laid-off during the pandemic.

In **Luxembourg**, a bill allowing jobseekers to take on temporary assignments in the context of the fight against the pandemic has been approved.

In the **Netherlands**, a favourable payment arrangement has been introduced for entrepreneurs with outstanding tax debts due to the pandemic.

Leave entitlements

In **Luxembourg**, the special family leave was again extended, this time until 23 July 2022.

In **Romania**, parents of quarantined children are granted care leave.

Table 1: Main developments related to COVID-19 measures

Topic	Countries
Lifting of COVID-19 restrictions	HR CY IT NO PT SI
Relief measures for workers	IE LU
Leave entitlements	LU RO
Relief measures for businesses	NL

Other developments

The following developments in April 2022 were of particular significance from an EU law perspective:

Working time

In **Austria**, the Working Time Act was amended to implement Regulation 2020/1054/EC.

In **Denmark**, in a ruling concerning a breach of a working time agreement in the public health sector, the Labour Court held that violations of working time schemes are considered severe breaches of agreement, even when they are minor, not deliberate and not systematic.

In **Sweden**, the Swedish Labour Court ruled on working time under the transport workers' collective agreement, outlining the obligations established in Section 5 of the Working Time Act.

Work-life balance

In **Estonia**, the system of maternity and parental leave was reformed.

In **Ireland**, a Bill will amend the Parental Leave Act to transpose Articles 6 and 9 of Directive 2019/1158/EU.

In **Italy**, Parliament authorised the government to amend legislative decrees to reorganise and strengthen the rules on work-life balance.

In **Luxembourg**, a special leave will be implemented for foster families.

Temporary agency work

In **Germany**, the Federal Labour Court ruled on the illegal hiring-out of workers from abroad, while the State Labour Court Lower-Saxony ruled on the admissibility of a fixed-term contract following the performance of temporary agency work.

In **Norway**, according to an amendment to the Working Environment Act, unions in an enterprise that hires temporary agency workers have a right to institute proceedings on the legality of the arrangement.

Seafarers work

In the **Czech Republic**, the list of special activities limited to those who are medically fit and hold authorisation as a condition to be taken on board as crew members of vessels has been extended.

In **Romania**, a new ordinance regulating work in the maritime field has transposed Directive (EU) 2018/131.

Transparent and predictable working conditions

In **Finland**, a government proposal implementing Directive 2019/1152 (EU) on transparent and predictable working conditions has been submitted to Parliament. Similarly, in **Germany**, the Federal Government has presented a draft law to implement the Directive.

Protection of whistleblowers

In **Croatia**, the new Act on Protection of Whistleblowers has been adopted, transposing Directive (EU) 2019/1937. Similarly, in **Poland**, a new draft bill implementing the Whistleblowing Directive was announced on 12 of April 2022.

Other legislative developments

In **Belgium**, according to the Court of Cassation, Article 6(4) of the European Social Charter, establishing the right to collective action, does not have direct implications for the Belgian legal order.

In the **Czech Republic**, new limits have been set to the amount of salary entitlements for employees by their insolvent employer to be covered by the Labour Office.

In **Lithuania**, a district court recognised the mandatory application of Lithuanian labour law to Ryanair employees performing their services in Lithuania,

regardless of the chosen applicable Irish labour law

In **Norway**, social security legislation was updated to clarify Norway's international obligations, according to the EEA agreement and other agreements.

In **Spain**, a new type of employment contract was created to address the singularities of research activities.

In the **United Kingdom**, the government is proposing to amend the Retained EU Law (REUL), which incorporates all of EU law into domestic law.

Table 2: Other major developments

Topic	Countries
Working time	AT DK FR SE SK
Collective bargaining / collective action	BE HR HU SI
Social security	BE NL NO RO
Work-life balance	EE LU IE IT
Whistleblowers	DE HR PL
Minimum wage	CY EL DE
Seafarers' work	CZ HR RO
Temporary agency work	DE NO
Transparent and predictable working conditions	FI DE
Teleworking	LU IE
Collective action	BE
Insolvency of the employer	CZ
Scientific researchers	ES
Applicable legislation	LT
Occupational health and safety	NL
Brexit	UK

Implications of CJEU Rulings

Honorary magistrates

This Flash Report analyses the implications of a CJEU ruling on the status of honorary magistrates in Italy.

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The CJEU's findings in this case concerned Italian honorary magistrates (*giudice di pace*). Following its ruling in case C-658/18, *UX* (see August 2020 Flash Report), the Court ruled that, when an honorary magistrate falls within the definition of 'part-time worker' or 'fixed-term worker' within the meaning of EU law, and is in a comparable situation to that of an ordinary judge, she/he is entitled to the same paid annual leave, social security or pension scheme provided for the latter category.

In this regard, the majority of national reports indicate that their national law does not provide for differences between different categories of judges, or that there are no categories comparable to the Italian *giudice di pace*.

Conversely, in countries such as **Belgium** and **Luxembourg**, the category of the *juge de paix* consists of professional magistrates who benefit from the same regime as other magistrates. Similarly, in **Portugal**, *juízes de paz* hold a legal relationship of public employment, being subject to the rules applicable to the employees performing public functions. In **Spain**, the High Courts stated that the *juez de paz* does not entail an employment relationship, and this category of magistrates is not included in any social security scheme.

This ruling also has limited implications for **Italy**, where the dispute examined by the CJEU concerned the period before the approval of the new regulations on honorary magistrates (Legislative Decree 13 July 2017 No. 116), which were approved to define the position of such judges and to address the classification doubts that had led to the CJEU's ruling in *UX*.

The CJEU also held that national legislation under which fixed-term employment relationships can be successively renewed a maximum of three times, each renewal being for a duration of four years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship, is not in line with European law.

In this regard, the large majority of reports indicated that their national legislation is compatible with the ruling, as the limit on fixed-term contracts established in law is more stringent than in the ruling under review (e.g. **Poland**), and that their legislation also entails the sanction of requalification as an open-ended contract (e.g. **Germany**).

Austria

Summary

(I) The Working Time Act was amended to implement Regulation 2020/1054/EC.

(II) The Supreme Court has ruled on the right to an allowance in lieu of paid annual leave not taken before the end of the employment relationship in case of early termination of the employment relationship by the employee.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Working time

The Working Time Act has been amended to ensure the enforcement of Regulation 2020/1054/EC, the so-called Mobility Package. One major amendment concerned the applicability of the legislation on lorries weighing 2.5 tonnes (instead of the previous 3.5 tonnes), another the prohibition of spending the weekly rest period in the vehicle as well as the obligation to plan these regular weekly rest periods so that at least one weekly rest period a month is spent at the driver's home. Additionally, the option of extending the weekly or daily working hours to reach the company's premises and/or the driver's home before the weekly rest period starts was introduced in the Working Time Act, which needs to accordingly be recorded in the working time records and may only be relied upon in exceptional circumstances (and not on a regular basis, e.g. as part of a planned route).

2 Court Rulings

2.1 Paid annual leave

Austrian Supreme Court, 9 ObA 150/21f, 17 February 2022; 9 ObA 147/21i, 17 February 2022; 8 ObA 95/21k, 22 February 2022; 8 ObA 99/21y, 22 February 2022

Context of the national court ruling: under § 10 of the Austrian Act on Annual Leave (*Urlaubsgesetz* - *UrlG*) reads as follows (translation according to the ruling of the CJEU case C-233/20, 25 November 2021, *WD vs. job-medium GmbH*)

> *"(1) On the date of termination of the employment relationship, the worker shall be entitled, for the reference year in which the employment relationship is terminated, to a compensatory indemnity as compensation for leave corresponding to the duration of employment during the reference year in relation to the entire reference year. Leave already taken shall be deducted from the annual leave due pro rata temporis …*
>
> *(2) No compensatory indemnity shall be due if the worker terminates the employment relationship prematurely without cause."*

In a number of cases, employees who have terminated their employment relationship prematurely without cause claimed compensatory indemnity for unused leave at the end of their employment relationship, claiming that the provision in § 10 (2) UrlG is in breach of Working Time Directive 2003/88/EC. The Austrian Supreme Court initiated a preliminary procedure before the CJEU and suspended the procedures that dealt with this question.

The CJEU delivered its preliminary ruling on 25 November 2021, CJEU case C-233/20, WD vs. job medium GmbH, stating that Article 7 of Working Time Directive 2003/88/EC (WTD) read in the light of Article 31(2) CFREU must be interpreted as precluding a provision of national law under which no allowance is payable in lieu of paid annual leave not taken in respect of the current and last year of employment, where the worker unilaterally terminates the employment relationship early and without cause. It is not necessary for the national court to verify whether the worker was unable to take the leave to which he or she was entitled.

The Austrian Supreme Court then continued the relevant procedures before it and has now delivered a number of similar rulings.

Summary of the major points of the rulings: The Supreme Court pointed out that Article 7(2) WTD only provides employees a minimum annual leave entitlement of four weeks. The Austrian UrlG, on the other hand, provides employees an entitlement of five or even six weeks of leave after 25 years of service, i.e. the national legal situation goes beyond the minimum entitlement required by Union law and is thus more favourable. To comply with the EU law requirements of the CJEU in case C-233/20, 25 November 2021, *WD vs. job medium GmbH*, on the interpretation of Article 7(1) of Directive 2003/88 in the present case and to ensure that the employee receives financial compensation for the outstanding unused annual leave at the time of the termination of the employment relationship, it is sufficient in accordance with the principle of the primacy of EU law to not apply § 10(2) UrlG (only) to the extent that the plaintiff receives leave compensation on the basis of the minimum leave of four weeks guaranteed under Article 7(2) WTD. In the view of the CJEU, deviating provisions to the detriment of employees are permissible insofar as only the part exceeding the minimum leave entitlement of four weeks provided for in Article 7 WTD is affected. Article 7 WTD, for example, does not preclude a national provision which provides for more than four weeks of leave but no financial compensation in the event that that worker is unable to use up these additional leave entitlements before retirement due to illness (CJEU case C-337/10, 03 May 2012, *Neidel vs. Stadt Frankfurt am Main*, para. 36). Financial compensation for the part of leave exceeding the four-week minimum leave is therefore not required under Union law and the Supreme Court therefore only granted an allowance in lieu of the four weeks (minus the annual leave already used).

As the Supreme Court points out, Union law only applies to the minimum amount of annual leave; any entitlements based on national law that go beyond this are not governed by Union principles. Therefore, the residual application of the Austrian provision under which no allowance in lieu of paid annual leave in case of a unilateral termination of the employment relationship early by the employee without cause to the exceeding one week is in line with the CJEU's ruling.

Austrian law in this respect is now very non-transparent for the worker as it still includes the excessive provision of § 10 (2) UrlG. It suggests to workers without any knowledge of the latest CJEU decisions that no allowance in lieu is due. And even if they know about it, they have to read the CJEU ruling in light of the latest decisions of the Supreme Court just mentioned. This situation should be cleared up by the legislator by bringing the Austrian UrlG explicitly in line with Union law to provide employers and workers with transparent legislation to guide their actions.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

In Austria, there are no honorary magistrates similar to the Italian magistrates. The Austrian court system only uses lay judges as members of the judiciary bench, but they

cannot be considered workers due to a number of reasons; one of them being the lack of subordination and the other the lack of remuneration as they are only compensated for costs and actual loss of earnings, if this is actually even the case. For lay judges in an employment relationship, their employer has to continue payment during their service as lay judges. Due to the lack of worker qualifications, Austrian lay judges are not covered by employment law directives; the ruling therefore has no implications for Austria.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) A new law reduces the Special Social Security Contribution for low- and middle-income workers.

(II) According to the Cour de Cassation, Article 6(4) of the European Social Charter does not have any direct implications for the Belgian legal order.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Social security

The law to reduce the burden on labour of 28 March 2022 has been published (*Moniteur belge*, 31 March 2022). Belgium is one of the countries in the European Union where labour income is taxed most heavily through income tax and social security contributions. To remedy this to some extent, the federal legislator has reduced the Special Social Security Contribution.

The federal legislator introduced the Special Social Security Contribution in 1994 to help finance the social security system. Although the National Office of Social Security for Employees initially collects the Special Contribution through monthly deductions from employees' salaries paid by the employer to the National Office of Social Security (for Employees) and the contribution is meant to finance social security benefits, this contribution still has the characteristics of an income tax. It is a personal contribution that depends on the family's net annual taxable income, excluding pensions, separately taxed income and professional income of foreign origin.

In a first step to abolish the Special Social Security Contribution, this law reduces the contribution amount deducted from income in 2022 (tax year 2023) for low- and middle-income earners.

For those with a household income in the income bracket of EUR 18 592.02 to EUR 21 070.96, which represents a large increase in the tax burden on the salary, the rate is reduced from 9 per cent to 5 per cent. This means that the Special Social Security Contribution will be reduced by a little less than 45 per cent for employees with a household income between EUR 18 592.02 and EUR 21 070.96.

2 Court Rulings

2.1 Collective action

Cour de cassation, No. P.21.1500.F, 23 March 2022

The Belgian *Cour de Cassation* ruled on 23 March 2022, P.21.1500.F on the legality of the criminal convictions of trade union militants who had maliciously obstructed road traffic and thus infringed the Criminal Code.

The Cour de Cassation had to rule on the criminal prosecution and conviction of 17 trade union militants of the socialist trade union FGBT for malicious obstruction of road traffic (Article 406 Criminal Code). The case dealt with a major collective action in the context of a national strike. A group of 100 to 200 demonstrators from the Walloon trade union FGTB blocked a bridge over the E49 in Cheratte (near Liège) for several hours. The demonstrators set fire to tyres on the unstable bridge and blocked the passageway for emergency services. There were also incidents involving angry truck drivers, a high risk of collisions and a massive 400 km traffic jam. The public prosecutor prosecuted 17 members of the union identified by the police, including senior union officials. All 17 members were convicted in the first instance and on appeal (see Court of Appeal, Liège, 2021/CO/173, 19 October 2021).

The union members argued that they could not be punished as perpetrators of the offence of malicious blocking of traffic, as this offence could only relate to an ending offence, i.e. the fact that a blockade had been put in place to stop traffic. They claimed to have taken part in the blockade only at a later date and only after the traffic had already come to a halt. As the offence was already in progress, they were only present after the offence had been completed. Since by their mere presence, the strikers had actively contributed to the mass picket (and thus the blockade), the Cour de Cassation ruled that the offence was ongoing as long as the obstruction of traffic continued.

The strikers argued that the criminal prosecution of activists who had not actively contributed to the blockade, but were merely present, violated the freedom of association in accordance with Article 11 of the European Convention on Human Rights, and was a disproportionate restriction of this freedom. The Cour de Cassation again disagreed and reiterated that their presence alone at the site was sufficient to contribute to the blockade, which had detrimental consequences for public (traffic) safety and obstructed the free movement of persons and goods and violated the legal restrictions in the Criminal Code.

Furthermore, the activists argued that some of them had been penalised more severely because of their status as key trade union executives, which violated Articles 10, 11 and 14 of the ECHR and the right to collective action in Article 6(4) of the European Social Charter (ESC). The Court stated, however, that the activists could not rely on Article 6(4) ESC because, according to the Court, this provision is not sufficiently clear and precise to confer direct effect on it. The applicants therefore had no subjective right they could invoke against the criminal penalties claimed against them.

Next, the Court stated that certain activists had not been sentenced more severely due to their function within the trade union, but only because they did not use their authority to limit or stop the blockade of motorways.

Consequently, the Court rejected all of the trade unionists' claims and upheld the criminal conviction.

The decision of the Cour de Cassation on the lack of direct effect of Article 6(4) ESC is somewhat surprising. After all, the doctrine and part of the jurisprudence in Belgium often assumed that this provision does have direct effect, following the famous 'railways ruling' of the Hoge Raad in the Netherlands on 30 May 1986 (*Nederlandse Jurisprudentie*, 1986, 2546).

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The CJEU's first ruling has no implications for the Belgian legal order, because the legal position of the Belgian Justices of the Peace have an employment relationship just like

ordinary court judges, enjoy a long life nomination, work full time and have a salary just like other judges. Hence, the legal position of Italian justices of the peace (magistrates) differs completely from that of their Belgian colleagues. In Belgium, honorary judges receive no compensation for the little work they perform.

In Belgium, there is no system of appointing justices of the peace four times for four years. However, the CJEU's second answer is more general and therefore, theoretically, more important for Belgian labour law.

Nevertheless, there is no legal provision in Belgium allowing the succession of four fixed-term contracts for four years each without the possibility of converting the contract into one of indefinite duration, nor any other measures to penalise the abuse of successive employment contracts. Article 10bis of the Employment Contracts Law of 03 July 1978 only permits four successive contracts of a maximum duration of six months, with a total duration of two years and with prior consent of the employment inspector for a total duration of three years.

The CJEU ruling C-236/20 is not particularly important for Belgian labour law.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

Nothing to report.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

As has already been reported, there are no honorary magistrates in Bulgaria. This ruling therefore does not have any implications for Bulgaria.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The new Act on Protection of Whistleblowers has been adopted, transposing Directive (EU) 2019/1937.

(II) New collective agreements have been concluded for seafarers and workers in the hospitality sector.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lifting of COVID-19 restrictions

The majority of COVID measures have been abolished due to the favourable development of the epidemic situation. However, in the health care sector and in the social assistance sector, the employees (as well as patients) are still required to wear facemasks and mandatory testing of all employees for the SARS-CoV-2 virus in the health care and social assistance sector is in place (solely for those employees providing social assistance services), at least once every seven days.

1.2 Other legislative developments

1.2.1 Whistleblowers

The new Act on Whistleblowers has been adopted (Official Gazette No. 46/2022). It abolished the Act on Whistleblowers of 2019. The main purpose of the new Act is to transpose Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, into Croatian law. The following changes need to be emphasised:

- The conditions for the protection of whistleblowers are explicitly prescribed (Article 12);
- The protection of the identity of whistleblowers is prescribed in detail (Article 14);
- Whistleblowers can directly use the external reporting channel without the obligation of first using the internal reporting channel (Article 23(2));
- Retaliation by employers is explicitly prohibited (Article 9);
- The deadline for claiming judicial protection in relation to when the applicant found out about the breach of law was deleted;
- Misdemeanour sanctions are prescribed for employers who initiate malicious proceedings against whistleblowers or related persons, etc.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The honorary ('lay') judges in Croatia (*suci porotnici*) are not comparable to ordinary judges. Lay judges have jury duty and support ordinary criminal and juvenile judges in the performance of their duties. They participate based on a contract for service, and not based on an employment contract. Consequently, they do not have employment protection. They benefit from social security protection, which is based on their primary employment or retirement. In addition, health- and pension-related social security contributions have to be paid based on the contract for service. Hence, they are covered by social security protection.

Additionally, it is worth mentioning that the sanction for abuse of successive fixed-term contracts is efficient in Croatia. According to Article 12(7) of the Labour Act, where an employment contract is not concluded in compliance with the provisions of this Act or where an employee continues to work for the employer after the expiry of the contract, it is deemed that the contract concluded was one of indefinite duration.

It can be concluded that Croatian law is in line with the CJEU ruling in this case.

4 Other Relevant Information

4.1 Collective Agreement for Seafarers

The Amendments to the National Collective Agreement for Seafarer Nationals of Third Countries on Ships in International Navigation of Croatian Nationality (2021–2022) has been concluded and published in the Official Gazette No. 48/2022. The novelty is the duration of the fixed-term contract. Namely, the employment contract is concluded for a fixed term, which may not exceed 9 months, and which, at the choice of the employer, may be extended or shortened by one month, depending on the requirements of the voyage, the possibility of changing crew or other justified circumstances. Furthermore, in case of force majeure (e.g. an epidemic, pandemic, natural disaster, war or war-like events not characterised by international conflict, etc.), which prevents the seafarer from disembarking after the expiration of the period for which the employment contract was concluded, the seafarer's period of embarkation will be extended until the moment when it is possible to safely disembark, and for a maximum period of 10 months and with the seafarer's consent.

4.2 Collective Agreement for the Hospitality Sector

The Collective Agreement for the Hospitality Sector has been concluded and was published in the Official Gazette No. 50/2022. It applies at the national level, and is concluded for a fixed period, until the end of 2023.

Cyprus

Summary

Domestic and agricultural workers as well as sailors will be excluded from the national minimum wage provision scheduled to be enacted in May 2022.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lifting of COVID-19 restrictions

The Republic of Cyprus has further eased the COVID-19-related restrictions.

Current requirements for entry into Cyprus are as follows:

- Vaccinated or recovered passengers must present a valid digital or hard copy of a vaccination or recovery certificate, or EU Digital COVID Certificate (EUDCC);
- Unvaccinated passengers or those who do not hold a valid vaccination or recovery certificate must present a negative PCR test taken within 72 hours of departure or a negative rapid antigen test taken within 24 hours of departure. Self-tests are not accepted for entry into Cyprus;
- Travellers to Cyprus are no longer required to complete a Cyprus Flight Pass. Passengers arriving without the relevant documents will be subject to a fine of EUR 300. Cypriot authorities may randomly test passengers on any arriving flight. Passengers who refuse to take a random PCR test upon arrival will be placed in mandatory 10-day quarantine at their expense;
- All COVID-19-related measures have been removed at border crossings;
- Masks are no longer required outside, and a safe pass is no longer required to enter shops and restaurants.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The Court ruled that Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time, Clause 4 of the Framework Agreement on Part-time Work, concluded on 06 June 1997 and which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on Part-time Work concluded by UNICE, CEEP and ETUC, as amended by Council Directive 98/23/EC of 7 April 1998, and Clause 4 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999 and which

is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP must be interpreted as precluding national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate falls within the definition of 'part-time worker' within the meaning of the Framework Agreement on Part-time Work and/or 'fixed-term worker' within the meaning of the Framework Agreement on Fixed-term Work and is in a comparable situation to that of an ordinary judge.

It also ruled that Clause 5(1) of the Framework Agreement on Fixed-term Work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of four years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship.

This case is not relevant for Cyprus, as there are no part-time judges or honorary magistrates in Cyprus.

4 Other Relevant Information

4.1 Minimum wage

Further deliberations on the introduction of minimum wage in Cyprus are underway. The Minister of Labour has stated to the social partners at the Labour Advisory Council that domestic and agricultural workers and sailors will be excluded from the national minimum wage provision that is scheduled to be enacted during May 2022 (Annie Charalambous: 'Three exemptions in minimum national wage by law in Cyprus', *In-Cyprus philenews*, 28 April 2022).

The Union of Doctoral Teaching and Research Scientists (DEDE) expressed strong opposition to the government's decision to exclude agricultural and domestic workers. The Union expressed outrage at the intentions of the government, social partners, institutional bodies, as well as a large number of MPs and noted that these jobs are almost exclusively held by migrants and asylum seekers, who are the most vulnerable and impoverished social groups in the country, working under conditions of modern slavery, who need legal protection more than any other group of the population, since they do not even have the right to freely organise themselves into trade unions. The Union views this to be a racist approach which, on the basis of origin, denies the needs of immigrants and refugees for a decent living and is an example of institutional racism. It calls on the government, Parliament, as well as all other stakeholders to review the decision. Finally, it also calls on all trade unions to show solidarity with these workers by actively supporting their labour rights, especially the most impoverished and vulnerable ones (Stockwatch, '*Να μην εξαιρεθούν εργάτες και οικιακές εργάτριες ζητά η ΔΕΔΕ*', 30 April 2022).

Czech Republic

Summary

(I) New limits have been set to the amount of salary entitlements owed to employees by their insolvent employer to be covered by the Labour Office.

(II) The list of special activities limited to those who are medically fit and are in possession of an authorisation as a condition to be taken on board as crew members of vessels has been extended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Insolvency of the employer

Communication of the Ministry of Labour and Social Affairs No. 104/2022 Coll., on the relevant amount for the determination of the total amount of salary entitlements provided to a single employee pursuant to Act No. 118/2000 Coll., on the protection of employees in case of employer insolvency and on the amendment of certain other acts, was published and entered into effect on 29 April 2022.

The text of the Communication is available here.

In case of employer insolvency, the employees are—under certain conditions—entitled to salary entitlements owed to them by their employer to be provided by the Labour Office of the Czech Republic.

The total amount of these salary entitlements covered by the Labour Office is limited and may not exceed 1.5 times the so-called relevant amount per month. This relevant amount is published by the Ministry of Labour and Social Affairs for 12 months from 01 May of each year, in the amount of the average salary in the national economy for the previous calendar year.

For the period from 01 May 2022 until 30 April 2022, the relevant amount of CZK 37 839 (i.e. approx. EUR 1 537) was published by the Ministry of Labour and Social Affairs.

The above is a regular annual change.

1.2.2 Seafarers' work

Decree No. 95/2022 Coll., amending Decree No. 112/2015 Coll. on the professional and medical competence of members of crews of vessels, on certificates, naval logs and the captain's oath, was published on 26 April 2022 and entered into effect on 01 May 2022.

The text of the Decree is available here.

Act No. 61/2000 Coll. on Naval Navigation states in Section 42(1)(a) that only those who are medically fit and hold an authorisation to carry out the so-called special activities may be taken on board as crew members of vessels.

Decree No. 112/2015 Coll. enumerates these special activities, i.e. activities the performance of which is necessary to ensure the health and safety protection of the crew members of the vessel or of the sea voyage on certain types of vessels, as well as to manage extraordinary situations.

The list of the special activities in Decree No. 112/2015 Coll. as extended by the following activities:

- essential operations on ships using gases or other low flash point fuels as fuel;
- extended operations on ships using gases or other low flash point fuels as fuel;
- basic polar navigation activities; or
- extended polar navigation activities.

Each of the above activities is defined separately.

The list of the so-called special activities has been extended.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The CJEU ruled that

> *"Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, Clause 4 of the framework agreement on part-time work, concluded on 6 June 1997 and which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 98/23/EC of 7 April 1998, and Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999 and which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as precluding national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate comes within the definition of 'part-time worker' within the meaning of the framework agreement on part-time work and/or 'fixed-term worker' within the meaning of the framework agreement on fixed-term work and is in a comparable situation to that of an ordinary judge."*

The CJEU further ruled that

> *"Clause 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of four years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship"*.

As to the equal treatment of part-time and fixed-term employees *vis-à-vis* other employees:

According to Section 16(1) of the Labour Code, employers are required to ensure equal treatment of all employees in relation to working conditions, remuneration for work and the provision of other pecuniary performances and performances of a pecuniary value,

vocational preparation and the opportunity to achieve functional or other advances in employment. In other words, employers have the obligation to ensure equal treatment of all employees who are in the same or similar circumstances—regardless whether they are part-time, fixed-term or full-time employees, etc. Differentiated treatment is only allowed when employees' circumstances differ. However, the *pro rata temporis* principle has not been explicitly introduced under Czech law, meaning that, as already mentioned, employees in objectively different circumstances might be treated differently, without taking any proportionality into account.

As to successive fixed-term contracts:

Section 39 of the Labour Code states the following:

> *" (1) An employment relationship lasts for an indefinite period of time, unless a fixed term is explicitly agreed.*
>
> *(2) The duration of the employment relationship for a fixed term between the same contracting parties may not exceed 3 years from the start of the first fixed-term employment relationship and may be repeated twice maximum. The extension of a fixed-term employment contract is considered a repetition as well. If a minimum of 3 years have passed after the end of the last fixed-term employment relationship, the previous fixed-term employment is not considered.*
> *(3) […]*
> *(4) Where the employer has serious operational reasons or reasons related to the special nature of the work on the basis of which the employer cannot reasonably be required to propose the conclusion of an employment relationship of indefinite duration with the employee, and the procedure under subsection (2) shall not be followed, provided that another procedure applies to those reasons and the employer's written agreement with the trade union provides for*
> *(a) a more detailed definition of those reasons,*
>
> *(b) the rules governing the employer's other procedure for the conclusion and renewal of fixed-term contracts,*
>
> *(c) the range of the employer's employees who will be affected by the differentiated procedure,*
>
> *(d) the period for which the agreement is concluded.*
>
> *A written agreement with a trade union may only be replaced by an internal regulation if the employer does not have a trade union; the internal regulation must contain the elements referred to in the first sentence.*
>
> *(5) If the employer agrees with the employee to continue the employment relationship for a fixed term in contravention of subsections (2) to (4), and if the employee has notified the employer in writing before the expiry of the agreed period that he insists on continuing the employment relationship, it shall be deemed to have been concluded for an indefinite period. The employer and employee may apply to the court to determine whether the conditions referred to in paragraphs 2 to 4 have been fulfilled within two months of the date on which the employment relationship was due to end upon expiry of the agreed term.*
>
> *(6) The provisions of subsection (2) shall not apply to an employment contract establishing an employment relationship for a fixed term agreed between a temporary work agency and an employee for the purpose of performing work for a user undertaking (Sections 307a, 308 and 309)."*

Section 309(6) of the Labour Code then states the following:

> *"A temporary work agency cannot temporarily assign the same employee to work for the same user undertaking for more than 12 consecutive calendar months. This restriction shall not apply where the temporary work agency is requested to do so by an employee of the temporary work agency, or where the work is for*

the duration of a replacement of an employee of the user undertaking who is on maternity or parental leave or for an employee of the user undertaking who is on parental leave".

Therefore, as a rule, the Labour Code allows for a maximum of 3 successive fixed-term employment relationships with a total maximum duration of 9 years (3 years per fixed-term employment relationship). These restrictions do not apply only in restricted cases (see above). If these rules are not observed and if the employee insists on further employment, these fixed-term employment relationships will transform into an employment relationship of indefinite duration. This seems to be in line with Directive 1999/70.

However, the exception for temporary work agencies seems to be problematic with respect to the CJEU ruling in case C-681/18, 14 October 2020, *JH v KG*. If the temporarily assigned employee agrees to it, the duration of assignment with the same user undertaking is virtually unlimited – we do not believe that this is in accordance with Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. We have addressed this in the October 2020 Flash Report.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

In a ruling concerning a breach of a working time agreement in the public health sector, the Labour Court held that violations of working time schemes are considered severe breaches of agreement, even when they are minor, not deliberate and not systematic.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Working time

Danish Labour Court, No. 2022-433, 07 April 2022,

The Court examined whether the Capital Region of Denmark as an employer had breached the rules on rest periods in the parties' Working Time Agreement for several nurses employed at a hospital (*Rigshospitalet*). The potential breach covered the period from 01 January 2016 to the first quarter of 2018.

The rules in question concerned:

- the normal daily working time, which for full-time employees was set to between five to 12 hours;
- the weekly rest period, which must last between 55 to 64 hours; and
- the daily rest time between two normal working days, which could be reduced to 8 hours, but such a reduction could take place maximum twice a week and not for two days in a row.

Both parties had undertaken multiple investigations whether specific rules in the Working Time Agreement had been violated. They had also initiated a joint investigation.

The employer, the Capital Region of Denmark, acknowledged that a number of violations of the rules on rest periods had occurred in the course of planning shifts at *Rigshospitalet*. The extent of violations was, however, disputed. The Labour Court estimated that the rules had been violated in approximately 1.3-1.35 per cent of the 57 448 investigated shifts/the 55 247 investigated shift days.

The Court found that the employer was liable for violations of the rules on working time, which had been agreed between the parties. There was, however, no basis to claim that the violations were deliberate or systematic.

The Court set the penalty to DKK 250 000 (approx. EUR 33 616). In calculating the penalty, the Court took into consideration, on the one hand, that the case concerned a high number of violations, that the rules are intended to protect the health of employees, and that *Rigshospitalet* is a large workplace with administrative resources available to plan the work tasks in accordance with the rules on working time. On the other hand, the Court considered that the rules on working time are complex, and that

they apply to a high number of employees at *Rigshospitalet*. Furthermore, violations of working time may, to some extent, be excused due to staff shortages in case of illness and in acute, unforeseeable situations. Lastly, *Rigshospitalet* had tried to resolve the issue by initiating an action plan, for example, and there was no basis for assuming that any employee had not received payment for all of the work performed.

The ruling is in line with the EU law *acquis.* The legal basis were working time agreements in collective agreements. The Working Time Directive was not referred to in the interpretation. The parties agreed that the working time framework in the collective agreement had been breached.

The case, in essence, focussed on the question of the extent of the sanctions.

The Danish Labour Court considered all aspects of the case in its calculation of the penalty for breach of the collective agreement, as laid down in the Labour Court Act, section 12(5).

The penalty was high enough to indicate, that violations of working time are deemed severe breaches of agreement, even when they are minor and not deliberate or systematic.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The ruling does not have any implications for Danish law, as it concerns a special type of honorary judges, namely Italian honorary magistrates.

In the Danish judicial system, the courts employ ordinary judges, deputy judges (education position covered by terms in collective bargaining agreements), administrative employees and other personnel.

A type of voluntary position as an honorary judge or similar as described in the CJEU ruling is not used in the Danish judiciary system.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

The maternity and parental leave scheme has been reformed.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Parental leave

On 01 April 2022, new amendments to the Employments Contracts Act came into force. These amendments will introduce changes in the parental and maternity leave scheme.

Pregnancy leave is now maternity leave.

From 01 April, pregnancy leave will be referred to as maternity leave, and instead of maternity benefits, the Social Insurance Board will pay maternity parental benefits to mothers. Part of the parental leave and benefits is intended to be shared individually with the mother and partly with the father, and the rest with both parents. The length of maternity leave is 100 calendar days.

More flexible options for combining part-time work and rest and parental care sharing will come into force. In the future, a parent can also use parental benefits by calendar day until the child reaches the age of 3. Thus, a parent can continue to work, for example, and allocate the parental benefit over a longer period, or both parents can alternately stay at home with the child.

Since 01 April 2022, parental leave will be granted to both parents separately and on a child-by-child basis. Both parents are entitled to their own individual right to leave and benefits, and paid parental leave can be taken for 10 days for each child until the end of the child's 14th birthday. At the same time, the payment for maternity leave increases to half of the parent's average salary. The leave can be taken consecutively or as part days.

The right to adoptive leave and benefits extends to the parents of a foster family. The support paid to foster family parents has increased. The conditions of adoptive leave and adoptive parental benefits have been amended so that all adoptive parents and parents of a foster family are entitled to leave and benefits. The adoptive parental benefit is 100 per cent of the parent's previous income. The 70-day leave can be taken consecutively or as part days and shared between both parents or foster parents.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The present case concerned magistrates' 'rights for 30 days' paid annual leave and to social security and pension schemes deriving from their employment relationship, such as that provided for ordinary judges if that magistrate falls within the definition of 'part-time worker' within the meaning of the Framework Agreement on Part-time Work and/or 'fixed-term worker' within the meaning of the Framework Agreement on Fixed-term Work and is in a comparable situation as an ordinary judge.

Also, national legislation is not in line with European law according to which fixed-term employment relationships can be renewed a maximum of three times successively, each renewal for a duration of four years, for a total duration not exceeding 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuation of the employment relationship.

In Estonia, lay judges participate in the administration of justice in District Courts on the grounds and pursuant to the procedure provided by the procedural acts. In the administration of justice, a lay judge is entitled to the same rights as a /an ordinary/ judge.

This is a specific relationship in which the appointment, status, requirements and responsibilities of lay judges are governed by the Courts Act. At the same time, a lay judge does not have to have a law degree, because his or her task as an ordinary person is to view the trial primarily from a human rather than a legal perspective.

A lay judge is only involved in criminal cases on first-degree offences in county courts. In addition to the presiding judge, the court is composed of two lay judges. It is important to note that there are fundamental and significant differences in the duties, conditions of appointment and competences of professional and ordinary judges. Once a lay judge has given his or her consent to take part in a particular trial, he or she is required to attend the hearings. Still, in case a lay judge cannot participate in a trial, another lay judge is involved in the trial.

Lay judges are randomly selected from among lay judges assigned to a particular court. If the lay judge first called to the trial is unable to take part in the hearing, the next lay judge on the list will be called. In addition, the involvement of lay judges in a particular process shall take the need to include, as far as possible, persons of different sexes and ages, from different social groups and from different fields of activity into account.

The amount of remuneration paid to lay judges and the payment procedure are established by a regulation of the minister in charge of the policy sector (Minister of Justice). The Courts Act provides that an employer must exempt a lay judge from work for the time of his/her participation in the administration of justice. There are also some terms of pensions for lay judges. Lay judges are appointed for four years. A person may not be appointed as a lay judge for more than two consecutive terms.

In a nutshell**,** in view of the special status of the Estonian lay judges, the link with the employment relationship is too remote for the 'right to 30 days' paid annual leave and to social security and pension schemes deriving from the employment relationship' mentioned in CJEU case C-236/20.

In addition, lay judges participate in the work of the Labour Dispute Resolution Committee on the basis of the Labour Dispute Resolution Act. The presentation and selection of the employee and employer representatives for the lay judges and the participation of the lay judges in the work of the Labour Dispute Committee are also specific and optional. Rather, it is an honour and a contribution to society, an experience that is always voluntary. Thus, there are no similar determining conditions that could be used to link this particular professional relationship to an employment relationship.

4 Other Relevant Information

Nothing to report.

Finland

Summary

(I) A government proposal implementing the Directive on transparent and predictable working conditions has been submitted to Parliament.

(II) Another government proposal seeks to improve the employability of workers over the age of 55 years.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Transparent and predictable working conditions

The government proposal (HE 60/2022 vp) seeks to implement the government programme objective of more stable working hours in variable hours contracts. In addition, it implements the amendments necessitated by Directive (EU) 2019/1152 on transparent and predictable working conditions. The government submitted its proposal to Parliament on 21 April 2022.

Variable hours contracts are zero-hours contracts and other contracts that do not set a fixed number of working hours, i.e. the employee's working hours vary. In the future, employers' obligation to review the use of variable working hours contracts in line with their need for labour would increase. The variable working hours condition concerns the number of hours agreed in an employment contract. According to the government proposal, employers should review their practices at least every 12 months. An employee should be offered a higher number of working hours if his/her number of actual working hours and the employer's need for labour during the review period indicate that the employee's minimum working hours could be set higher.

The government proposal would implement the amendments necessitated by the Directive on transparent and predictable working conditions. According to the Employment Contracts Act (*Työsopimuslaki,* 55/2001), employers must give their employees a written account of the principal terms and conditions of work if they are not laid down in a written employment contract. In the future, employers would have to share their written account more quickly, an obligation that would be extended to short-term employment relationships as well. The written account should include other information as well, such as training provided by the employer and name of the insurance institution that provides pension coverage or occupational accident insurance for the employer's employees. The account should also contain information on special conditions on shift scheduling in variable hours contracts.

Employers who are required by law or by a collective agreement to offer training to their employees should offer that training free of charge. The time spent on training should be considered working time and, where possible, training should be provided during regular work shifts. In addition, employers should give a well-grounded response in writing to an employee working on a fixed-term or part-time basis requesting the possibility of extending his/her regular working hours or the contract duration laid down in the employment contract.

The proposed amendments to the Working Hours Act (*Työaikalaki*, 872/2019) deal with variable working hours arrangements. The Act would lay down provisions on situations in which the employee's consent is required for assigning a work shift. In addition,

employers would be required to pay their employees a reasonable compensation for the inconvenience of having a work shift cancelled less than 48 hours before the shift is set to start. The amended provisions would apply to situations where such remuneration or pay would not otherwise be paid on the basis of law, a collective agreement or the binding nature of the agreed shift.

The amendments to the Employment Contracts Act and Working Hours Act, which have been prepared on a tripartite basis, would enter into force on 01 August 2022.

1.2.2 Employability of senior workers

The government proposal (HE 62/2022 vp), which was submitted to Parliament on 21 April 2022, entails strengthening the change security model to improve the employability of those aged 55 years and older. The proposed change security model would consist of change security payments and change security training. Under the Employment Contracts Act, the duration of employment leave is determined in accordance with the duration of the period of notice. According to the government proposal, the employment leave of those aged 55 years and older would be 5, 15 or 25 days.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

Finland does not have a system of magistrates that is similar to that of Italian honorary magistrates; hence the judgment has no implications for Finland.

4 Other Relevant Information

4.1 Gender equality

A draft government proposal on amendments to the Gender Equality Act (*Laki naisten ja miesten välisestä tasa-arvosta*, 609/1986) has been submitted for comments. The main purpose of the draft proposal is the prevention of pay discrimination based on gender and the promotion of equal pay by increasing pay transparency.

France

Summary

(I) The Economic and Social Database has been transformed into the Economic, Social and Environmental Database.

(II) The Court of Cassation ruled on cases concerning the unlawful loyalty clause and limitation period, the unfair early termination of apprenticeship contracts, travel time in excess of the usual travel time and the nullity of a fixed working time in a zero-hours agreement.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Economic, Social and Environmental Database

Decree No. 2022-678 of 26 April 2022 (Decree of 26 April 2022, No 2022-678) integrates the transformation of the ESDB (Economic and Social Database) into the ESEDB (Economic, Social and Environmental Database) in the statutory part of the Labour Code and completes the supplementary list of information that must be included in accordance with Act No. 2021-1104 of 22 August 2021, known as the "Climate and Resilience Act", which introduced a tenth heading relating to the "environmental consequences of the company's activity" within the ESEDB.

The decree sets out the list of environmental data that must be included in the ESEDB of companies that are not covered by a collective agreement defining this content, distinguishing between companies with fewer than 300 employees and those with 300 or more employees (French Labour Code, Article R. 2312-8 and R. 2312-9). In general, the ESEDB must now contain information relating to:

- The employer's general environmental policy (consideration of environmental issues and environmental assessment or certification procedures);
- The circular economy (prevention and management of waste production, especially dangerous waste, and sustainable use of resources, especially water and energy);
- Climate change: in this context, companies must identify the direct emission of greenhouse gases (produced by the sources needed for the company's activities).

2 Court Rulings

2.1 Loyalty clause and limitation period

Social Division of the Court of Cassation, No. 20-19.832, 02 March 2022

In the present case, an employee hired in 2010 as a consultant (engineer) requested the Labour Court on 01 February 2016 to reclassify a loyalty clause in her employment contract as a non-competition clause because, according to the employee, this clause was also intended to apply after the termination of her employment contract. In the absence of financial compensation, the employee claimed nullity of this non-competition

clause and the payment of damages due to the infringement of her freedom to find another job. Her employment contract was terminated during the proceedings.

The non-competition clause is not defined in French law. According to case law, this clause is only applicable if:

(i) It is indispensable for the protection of the company's legitimate interests;

(ii) It is limited in time

(iii) It is limited in space;

(iv) It is limited to a specifically targeted activity;

(v) It is subject to financial consideration (Labour Division of the Court of Cassation, 10 July 2002, No. 99-43.334.)

When a loyalty clause prevents an employee from carrying out an activity of his/her choice after the termination of his/her employment contract, the case law requalifies this clause as a non-competition clause.

The Labour Court confirmed that the contractual loyalty clause was a disguised non-competition clause and was, in fact, abusive. Nevertheless, as the employee had not demonstrated any resulting prejudice, the first judges dismissed her claim for damages. The employee appealed. The Court of Appeal did not rule on the claim for damages because it considered the action to be prescribed. For the Court, the starting point of the limitation period was the date on which the damage became apparent to the rightful holder. However,

> *"the alleged damage, namely the restriction of the employee's possibilities to look for work due to the application of a so-called loyalty clause, which was null and void, became apparent to the rightful holder when she signed her employment contract containing the said clause, the date on which she became aware of the disputed clause, and not at the end of the contractual relationship".*

Moreover, for the Court, "*it is at any time during the execution of the contract that the employee may have to look for a new job, a search that may be limited because of the disputed clause"*. By retaining the common law limitation period applicable at the date of conclusion of the contract (in 2010) and having noted that more than five years had elapsed between the signing of the contract and the date of referral to the Labour Court, the Court of Appeal deduced that the action for compensation was prescribed.

In its decision of 02 March 2022, the Court of Cassation censured the Court of Appeal's decision. It stated that "*the damage caused by the stipulation of an unlawful loyalty clause was not realised at the time the clause was stipulated but was exposed at the time of its implementation"*, and according to this decision, the limitation period for the civil liability action must run from the time the damage is realised or from the date on which it is revealed to the victim, i.e. from the time of implementation of the clause. The Court of Appeal was wrong to set the starting point of the limitation period on the date of the signing of the contract. The employee will nevertheless have to prove the existence of a prejudice before the Court of Appeal of reference. As regards the duration of the limitation period, the application of the five-year limitation period under ordinary law was not contested before the Court of Cassation. The two-year limitation period for actions relating to the execution of the contract of employment could also be invoked in this type of dispute (French Labour Code, Article L. 1471-1.).

With its decision, the Court of Cassation reinforces the protection of employees whose employment contract stipulates an apparent loyalty clause which in fact is a disguised non-competition clause. The fixing of the starting point of the limitation period at the time of the application of the clause, in other words, from the termination of the employment contract, contributes to this extended protection: this fixing of the period allows employees with significant seniority to not be deprived of such recourse solely on

the grounds that their employment contract was signed on a date according to which the limitation period would have expired.

2.2 Early termination of apprenticeship contracts

Social Division of the Court of Cassation, No. 19-20.658, 15 March 2022

In the present case, a bodywork apprentice was hired under a contract that took effect on 01 September 2014 and expired on 31 August 2016.

The apprenticeship contract is a special type of employment contract, which, apart from derogations, usually covers young people aged between 16 and 25 years on the date of conclusion of the contract (French Labour Code, Article L. 6222-1.), enabling them to follow an academic training course while working for a company. The apprentice is therefore both a real employee of the company and a student. As regards the termination of such employment contracts, the Labour Code provisions applicable at the time the facts of the case occurred (French Labour Code, former Article L. 6222-18.) allowed either party to the contract to terminate it unilaterally in the first two months of the apprenticeship (as opposed to the first 45 days as is the case today). In fact, the employer had proceeded to unilaterally terminate the contract after the two-month period had expired, while at the same time dating its effect to 31 October 2014.

The apprentice had appealed to the Labour Court before an appeal was lodged against the judgment. The Court of Appeal confirmed the irregularity of the termination: after the first two months, the contract could only be terminated by mutual agreement of the parties or by applying to the competent court for termination on the grounds of serious misconduct, repeated failure by the apprentice to fulfil his/her obligations or inability of the apprentice to carry out the trade being prepared. The judges of the Court of Appeal awarded the apprentice compensation equivalent to the wages due until the end of the contract. On the other hand, they refused to pay him the related leave, considering that it was not due in view of the nature of indemnity of the sums paid.

In its decision of 16 March, the Court of Cassation censured the Court of Appeal's decision on this last point. For the Court, it follows from the former Article L. 6222-18 of the French Labour Code that "*the termination by the employer of an apprenticeship contract outside the cases provided for in the aforementioned article is without effect".* As this termination was without effect, "*the apprentice was entitled to claim payment of the wages due until the end of the contract, so that these gave rise to the right to payment of the related paid leave"*. The apprentice was awarded a total of EUR 13,421.25, including EUR 1,220.11 in paid leave.

Since then, the terms and conditions for terminating an apprenticeship contract have largely been modified and simplified, in particular by the Act of 05 September 2018 (Act of 05 September 2018, No 2018-771.). The solution reached by the Court of Cassation in this decision remains applicable: the employer still cannot unilaterally terminate an apprentice's contract outside the possibilities opened by the current Article L. 6222-18 of the French Labour Code (French Labour Code, Article L. 6222-18.). Moreover, the former termination procedures continue to apply to apprenticeship contracts concluded before 01 January 2019, so that the solution reached by the Court of Cassation still applies to ongoing litigation.

2.3 Travel time

Social Division of the Court of Cassation, No. 20-15.022, 30 March 2022

In the present case, a trade union challenged the validity of the system of compensation for 'overtime' for commuting defined unilaterally within an economic and social unit and which concerned a population of non-sedentary employees who did not usually work in their home agency. The union argued in particular that the indemnity threshold was out

of proportion to the average home-to-work travel time identified by the "Direction de l'Animation de la Recherche des Études Statistiques", which was 50 minutes per day (return journey) at the national level and 68 minutes in the Paris region. The excess time provided for by the contested system, i.e. the excess travel time not indemnified, amounted to almost two hours.

In principle, the time spent travelling to the place of performance of the employment contract is not considered actual working time (French Labour Code, Article L. 3121-4, al. 1.). On the other hand, if this travel time exceeds the normal travel time between home and the usual place of work, it is subject to compensation either in the form of rest or in financial terms (French Labour Code, Article L. 3121-4, al. 2.).

Following a judgment handed down by the Labour Court, an appeal was submitted. The Court of Appeal upheld the union's claim, considering that the compensation provided for did not comply with the provisions of Article L. 3121-4 of the French Labour Code, as it was not related to normal commuting time, which the Court defined, for itinerant employees, as the journey between their home and the agency to which they were attached. The Court thus ordered the employer to set up a system of compensation. The employer appealed to the Court of Cassation, claiming that it was not up to the judge to assess the sufficiency of the compensation, especially since the definition of the usual place of work used by the Court of Appeal for itinerant employees did not comply.

In its decision of 30 March 2022, the Social Chamber made an initial clarification: the fact that some employees of companies in the economic and social unit do not usually work in their home agency does not exempt their employer from complying with the provisions of Article L. 3121-4 of the Labour Code. Indeed, even though the identification of a 'usual place of work' may be a source of difficulties, the Court of Cassation has already illustrated on numerous occasions the application of this text to itinerant employees (Social Division of the Court of Cassation, 31 May 2006, No. 04-45.217; Social division of the Court of cassation, 04 May 2011, No 09-67.972). The Court of Cassation has validated the calculation of the normal travel time of a travelling employee used in this case by the Court of Appeal, which defined "*the usual place of work as being the place where his agency is located, provided that it is at a reasonable distance from his home, so that the travel time thus determined is equivalent to the normal travel time between home and the usual place of work of an employee in the region in question"*. Then, in a second clarification, the Social Chamber specified that *"in the exercise of its sovereign power to assess the facts and evidence, the Court of Appeal considered that the compensation granted by the company was disconnected from these normal travel times, the excess of nearly two hours being too high*". Thus, the Social Division ruled that the Court of Appeal "*was able to deduce that the financial compensation for the time spent travelling to and from work in excess of the normal commuting time between home and the usual place of work, fixed unilaterally by the employer companies, disregarded the provisions of Article L. 3121-4 of the Labour Code due to their derisory nature*".

After having previously indicated that it was up to the judges of the court of first instance, when no compensation is provided for, to determine this counterpart (Social Division of the Court of Cassation, 15 May 2013, No. 11-28.749.), the Court of Cassation now recognises with this decision of 30 March 2022, that they have the power to assess whether or not it is sufficient when it exists.

2.4 Working hours

Social Division of the Court of Cassation, No. 20-18.651, 30 March 2022

In the present case, in the context of litigation relating to his dismissal for serious misconduct, a sales representative claimed payment of overtime based on a clause in his employment contract stipulating a monthly fixed amount of 198.67 hours, for a fixed

monthly remuneration of EUR 1 404. The employee argued that his employer had not paid the overtime inherent in this fixed amount. To avoid conviction, the employer argued that the fixed working time in the zero-hours agreement mentioned by the employee was irregular insofar as it set a fixed remuneration without defining the number of overtime hours included in this remuneration.

In principle, all employees can conclude a monthly fixed working time contract, provided that certain conditions are met:

(i) The fixed working hours must be agreed in writing (French Labour Code, Article L. 3121-55);

(ii) The individual fixed working time agreement must specify the number of hours corresponding to the agreed remuneration (Social Division of the Court of Cassation, 9 December, No 19-11.519.);

(iii) This remuneration must be at least equal to the minimum remuneration applicable in the company for the number of hours corresponding to the fixed working time, increased, where applicable, by the overtime (French Labour Code, Article L. 3121-57.)

After a first judgment, the Court of Appeal ruled that the fixed working time clause was indeed irregular and that it was therefore appropriate to revert to the ordinary law on working time and consequently to reject the employee's claim.

In its decision of 30 March 2022, the Court of Cassation laid down the principle that "*only the employee may claim nullity of the fixed working time agreement*". Under these circumstances, the employer's defence, which was based on the irregularity of the fixed working time, which the employee had not raised, was not admissible. The employer's approach was doubly condemned by the Court of Cassation, since the employer was not allowed to claim irregularity of the fixed working time agreement, but also the disputed fixed working time agreement was deemed entirely regular. While it is established by case law that the simple setting of a fixed remuneration, without determining the number of overtime hours corresponding to this remuneration, does not constitute a fixed working time agreement (Social Division of the Court of Cassation, 03 May 2011, No. 09-70.813.), the setting of a precise number of working hours, in this case 198.67 hours, makes it possible to deduce the number of overtime hours, in this case 47 hours. Thus, the Court of Cassation emphasised that "*the setting by the employment contract of a fixed monthly working time of 198.67 hours indicates the existence of a fixed remuneration agreement including a determined number of overtime hours".* The employer is therefore, under these circumstances, liable for the overtime provided for.

This solution reached by the Court of Cassation is part of a trend in case law that excludes the employer from claiming rules enacted for the sole purpose of protecting the employee. This is the reasoning on which the Court of Cassation has already based its rulings to specify that only the employee can request requalification of a fixed-term contract into one of indefinite duration (Social Division of the Court of Cassation, 30 October 2002, No. 00-45.572.), or claim the nullity of a non-competition clause (Social Division of the Court of Cassation, 02 February 2006, No. 04-41.004.), in particular, when the latter is devoid of financial compensation (Social Division of the Court of Cassation, 25 January 2006, No. 04-43.646.).

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

In reply to a first question for a preliminary ruling which was declared admissible, the CJEU held that Article 7 of Directive 2003/88, Clause 4 of the Framework Agreement on

Part-time Work and Clause 4 of the Framework Agreement on Fixed-term work must be interpreted as precluding national legislation which does not provide for any entitlement of an "honorary judge" to paid annual leave or to a pension scheme such as that provided for ordinary magistrates, provided that:

(i) such an 'honorary judge' falls within the notion of 'part-time worker' or 'fixed-term worker';

(ii) and the honorary judge is in a situation comparable to that of an ordinary magistrate.

Under French law, 'honorary judges' are not 'workers' but voluntary workers in the running of organisations with a social purpose. They are appointed for a certain term of office, depending on their function, and do not receive remuneration but compensation. According to the status of 'honorary judges' under French law, they do not fall under the concept of 'part-time worker' or 'fixed-term worker' since they are not 'workers': French legislation does not, therefore, provide them with a pension scheme. In application of this CJEU decision, no national regulation would have to provide for the benefit of paid annual leave or a welfare scheme such as the one provided for ordinary magistrates, who are effectively 'workers' under French law.

In reply to the third question declared admissible, the CJEU considered that Clause 5(1) of the Framework Agreement on Fixed-term Work must be interpreted as precluding national legislation under which a fixed-term employment relationship may be subject to a total duration of no more than 16 years, and which does not provide for the possibility of effectively and dissuasively penalising the improper continuation of employment relationships. Under French law, 'honorary judges' are mandated for a fixed period of time, depending on their functions, which is renewable. They are not subject to the legislation on fixed-term employment because they are not employees but volunteers and thus do not enter into any 'employment relationship'. In support of the CJEU's decision, the legislation does not have to provide for the possibility of sanctioning the renewal of these mandates, which do not bring 'honorary judges' into an 'employment relationship'.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Government has presented the draft Minimum Wage Increase Act, and a draft law to implement the Directive on transparent and predictable working conditions.

(II) The Federal Labour Court has ruled on the illegal hiring-out of workers from abroad. The State Labour Court Lower-Saxony has ruled on the admissibility of a fixed-term contract following temporary agency work.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Minimum wage

The Federal Government has presented the draft Minimum Wage Increase Act. The draft is legally and politically highly controversial as, on the one hand, the legislator is 'pushing aside' the Minimum Wage Commission, and, on the other hand, the two-year adjustment rhythm provided for in the Minimum Wage Act has been interrupted.

In the explanatory memorandum to the draft, the Federal Government points out, among other things, that

> "*at European level, too, the initiative for a European minimum wage framework pursues the goal of appropriate wages as an essential component of the social market economy and sees the need to counteract the structural trend towards greater polarisation of labour markets as a result of globalisation, digitalisation and the increase in atypical forms of employment, and to promote upward convergence in Europe, in particular through appropriate minimum wage protection for employees*" (BT-Drucks. 20/1408 of 13.04.2020, p. 17).

1.2.2 Transparent and predictable working conditions

The Federal Government has presented a draft law to implement Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union in the area of civil law (BT-Drucks. 20/1636 of 02 May 2022).

2 Court Rulings

2.1 Temporary agency work

Federal Labour Court, 9 AZR 228/21, 26 April 2022

If a temporary agency worker is hired-out to Germany from abroad without permission within the meaning of section 1 of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*, *AÜG*), former version, the violation of the obligation to obtain a permit does not lead to the invalidity of the temporary employment contract pursuant to section 9 No. 1 of the AÜG, former version, if the temporary employment relationship is governed by the law of another Member State of the European Union.

The requirements for a change of employer under section 10(1) sentence 1 of the AÜG, former version, are not met in this case.

The plaintiff was a French national and resided in France. She was hired by a company with a registered office in France. The employment relationship was governed by French law by virtue of choice of law. The plaintiff was eventually assigned to the defendant's business in Germany by her employer, who was not in possession of a permit for temporary employment pursuant to section 1 AÜG, former version. After the plaintiff had subsequently worked for other clients of the employer, the employer terminated the employment relationship. In court proceedings in France, the plaintiff claimed continuation of the employment relationship. She claimed that an employment relationship of indefinite duration between the parties had developed in accordance with section 10(1) sentence 1 of the AÜG, former version. She had been made available to the defendant to perform work. Although the employment relationship was governed by French law, the employment contract with her employer was invalid in Germany as a result of the unlawful assignment under section 9 No. 1 of the AÜG, former version. The provision was an encroachment provision within the meaning of Article 9(1) of the Rome Convention, which applied irrespective of the choice of law of the parties to the employment contract.

The Federal Labour Court ruled that the action was unfounded. No employment relationship had existed between the parties. The requirements of section 10 (1) sentence 1 of the AÜG, former version, had not been fulfilled, even if the plaintiff had been assigned to the defendant as a temporary agency worker. The establishment of an employment relationship between the temporary agency worker and the user undertaking by operation of the law pursuant to section 10(1) sentence 1 of the AÜG, former version, presupposed that the temporary employment contract concluded between the agency and the temporary agency worker had been concluded as a result of an unlawful act within the meaning of section 1 of the AÜG, former version. If the employment relationship between the agency and the worker was governed by the law of another Member State of the European Union, neither section 2 No. 4 of the Act on Posting of Workers (*Arbeitnehmentsendegesetz*, *AEntG*), former version, nor the AÜG stipulated that section 9 No. 1 AÜG, former version should take precedence over this law. Insofar as section 2 No. 4 of the AEntG, former version—in implementation of Article 3(1) lit. d of Directive 96/71/EC, former version—provided that the 'conditions for the hiring out of workers, in particular by temporary employment agencies' between an employer established abroad and its workers employed in Germany must be applied, this referred to legal and administrative provisions of national law which regulate the working and employment conditions of temporary agency workers, as well as to the requirements of the law on the hiring-out of workers under trade, placement and licensing law applicable in Germany. Section 2 No. 4 AEntG, former version, did not order the application of provisions which, such as section 9 No. 1 and section 10(1) sentence 1 of the AÜG, former version, concerned the existence of the temporary employment relationship. In the Court's view, section 9 No. 1 of the AÜG, former version, is also not an encroachment provision within the meaning of Article 9(1) of the Rome I-Regulation. The AÜG does not grant any protection to temporary agency workers posted to Germany by their employers from another Member State of the European Union that goes beyond that guaranteed by section 2 of the AEntG, former version. The public interest in compliance with section 1(1) sentence 1 of the AÜG, former version, is safeguarded by the fact that section 16(1) No. 1 and (2) of the AÜG, former version, penalise the violation of the obligation to obtain a permit as an administrative offence.

State Labour Court Lower-Saxony, 5 Sa 97 a.o., 21 April 2022

The Court upheld three actions brought by employees of Volkswagen AG (VW) who claimed the existence of an open-ended employment relationship. In further seven cases, the Court dismissed the appeals against the dismissing judgments.

The plaintiffs had been employed by VW without a fixed term from 01 September 2019 to 31 May 2020. Previously, they had been employed by AutoVision since the beginning of September 2016. This company is economically connected to the defendant, but legally independent. From the beginning of the employment relationship with AutoVision, the plaintiffs were employed by the latter as temporary agency workers at VW. The previous employment relationships were initially limited in time; the plaintiffs and AutoVision extended the time limit twice.

The plaintiffs objected to the termination of the employment relationship due to the expiry of the time limit and claimed abuse of rights. They claimed that the integration at VW based on the temporary employment relationship during the previous period of nearly three years had violated the Directive on Temporary Agency Work. The Labour Court had dismissed all claims in first instance. In three of the cases, the State Labour Court allowed the appeal on the grounds that a collective agreement providing for a maximum temporary employment period of 36 months did not apply to the employment relationships of the parties because the plaintiffs did not belong to a trade union. With regard to the other employment relationships that were subject to collective bargaining agreements, the Court considered the assignment to be legally valid. In particular, it did not find a violation of the Temporary Agency Work Directive. It also rejected the claim of abuse of rights.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

From a 'European perspective', the judgment could be of interest, above all, because the Court criticises the fact that Italian law "*does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship*".

This is not problematic from a German perspective, however. Section 16 sentence 1 of the Part-Time and Fixed-Term Contracts Act (*Teilzeit- und Befristungsgesetz*) stipulates the following in this respect: "*If the fixed-term contract is legally invalid, it is deemed to have been concluded for an indefinite period of time; it may be terminated by the employer with due notice at the earliest at the agreed end, unless ordinary termination is possible at an earlier point in time according to Section 15 (3)".*

4 Other Relevant Information

4.1 Whistleblowers

In response to a question from Parliament, the Federal Government has stated that the internal opinion-forming process on the draft law on the implementation of Directive (EU) 2019/1937 had not yet been completed within the Federal Government.

Greece

Summary

The minimum wage in the private sector will increase from 01 May 2022 onwards.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Minimum wage

Pursuant to a Ministerial Decision (38866/21.4.2022. Off. J. B΄ 2030), the minimum wage in the private sector, which was previously set at EUR 663 per month, will be increased by 7.5 per cent from 01 May 2022 onwards, which will raise the minimum monthly wage to EUR 713. We remind that another increase of 2 per cent was introduced on 01 January 2022.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The judgment has no implications for Greece as all Greek judges are only ordinary judges.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

The trade unions of teachers in public education have suspended their strike until the formation of the new government following the elections.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

There are no magistrates in Hungarian law, therefore, the first question addressed by the judgment is not relevant. There are, however, lay judges (see Articles 212-221 of Act 162 of 2011 on the legal status and remuneration of judges (BJT): the English translation of Act 162 of 2011 is available here. The Hungarian version is available here), who can neither be considered part-time, nor fixed-term employees.

As for the third question, the Labour Code (Act 1 of 2012 on the Labour Code) stipulates a maximum of five years for fixed-term contracts:

> *"Article 192 (2): The duration of a fixed-term employment relationship may not exceed five years, including the duration of an extended relationship and that of another fixed-term employment relationship concluded within six months of the termination of the previous fixed-term employment relationship".*

Therefore, the judgment is not particularly relevant, i.e. the Hungarian Labour Code is by and large in line with it.

4 Other Relevant Information

4. 1 Parliamentary elections

The parliamentary elections were held on 03 April, and the new Orbán government (with a qualified majority) will be formed in May. Consequently, in this period, there were no new labour law developments.

4.2 Strike of teachers in public education

As reported in the March 2022 Flash Report, from 16 March, the trade unions of teachers in public education announced an indefinite strike. The strike was suspended on 01 April until the formation of the new government.

Iceland

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

This ruling has no implications for Iceland.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) Legislation has been enacted to ensure that employees' redundancy payments are not affected by them being laid-off during the pandemic.

(II) A bill will amend the Parental Leave Act to transpose Articles 6 and 9 of Directive 2019/1158/EU.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Redundancy payments

Section 12A of the Redundancy Payments Act 1967 (the *Principal Act*) was inserted by s. 29 of the Emergency Measures in the Public Interest (COVID-19) Act 2020, and was deemed to have come into operation on 13 March 2020. The section provided that s. 12 of the Principal Act—which concerns the right to a redundancy payment by reason of lay-off—would not have effect during the "emergency period". That period expired on 30 September 2021 (see S.I. No. 284 of 2021).

Workers who were laid off by reason of compliance with the government policy to slow the spread of COVID-19 infections were entitled to the Pandemic Unemployment Payment. As of 4 May 2020, 605 668 persons were in receipt of this payment. By 23 February 2021, this had declined to 473 413; to 106 245 on 28 September 2021; and to 75 413 on 01 February 2022. As of 29 March 2022, the figure stood at 44 747.

Section 12A meant that none of these persons could exercise the right to claim a redundancy payment, but para. 8 of Schedule 3 to the Principal Act (as substituted by s.12 of the Redundancy Payments Act 2003) provides that periods of lay-off during the final three years of an employee's service do not count as "reckonable service" for the purpose of calculating the statutory redundancy payment. Following discussions at the Employer Labour Economic Forum, the government decided not to deem periods of COVID-19-related lay-off to be reckonable service but instead to provide a payment from the Social Insurance Fund.

The purpose of the Redundancy Payments (Amendment) Act 2022 is to provide for payment of this additional sum, the amount of which will be equal to the difference between the actual lump sum due to the redundant person and the amount to which he or she would have been entitled but for the relevant period of lay-off. The Act came into operation on 19 April 2022 (see S.I. No. 174 of 2022).

1.2 Other legislative developments

1.2.1 Parental leave

The Department of Children, Equality, Disability, Integration and Youth has published the General Scheme of a Bill to amend the Parental Leave Act 1998 to make provision for leave for medical care purposes and a right to request flexible working arrangements for employees with children up to a specified age (which shall be at least 8 years) for caring purposes as set out in Articles 6 and 9 of Directive 2019/1158/EU on work-life balance.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The judiciary in Ireland is comprised entirely of professional full-time judges. There is no position of 'honorary judge/magistrate'. Consequently, this CJEU decision has no direct consequences or implications for Ireland.

4 Other Relevant Information

4.1 Teleworking

The results of a Central Statistics Office survey on Personal and Work-Life Balance reveal that 39 per cent of employees worked remotely at some stage in 2021 compared with 8 per cent who availed of some form of remote working scheme before the onset of the COVID-19 pandemic. Of these, employees in the education sector had the highest level of remote working – 86.2 per cent. Professionals were most likely to have worked remotely – 62.7 per cent. Skilled trade workers had the lowest level of uptake of remote working – 2.8 per cent. Full-time employees in organisations of 100+ employees were most likely to have worked remotely (48.9 per cent) compared with full-time employees in organisations of less than 20 employees (31.3 per cent).

The most commonly used remote working space was the home – 75.6 per cent. Life and job satisfaction was the highest for those working mostly at home with a mix of office, hub or travel (94.2 per cent), marginally greater than those who remote worked completely from home (93.6 per cent).

4.2 Illness benefits

As of 26 April 2022, 501 019 people have been medically certified for receipt of a COVID-19 related Enhanced Illness Benefit, of whom 53.3 per cent were female. 4 327 people were in receipt of this benefit payment. The sectors with the highest number of recipients are wholesale and retail trade (107 761), human health and social work (62 906) and manufacturing (60 854).

Italy

Summary

(I) The Italian Minister of Health has published guidelines for the recovery of social and economic activities.

(II) Parliament has authorised the government to elaborate legislative decrees with the aim of reorganising and strengthening the regulations on family benefits and to repeal the ban on simultaneous enrolment in two university courses.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Recovery of social and economic activities

The Decree of the Minister of Health, 01 April 2022) provides guidelines for the recovery of social and economic activities. It will be in force until 31 December 2022.

The Decree introduces general principles and specific rules for every economic sector.

The general principles are as follows: surface and hand hygiene, frequent ventilation, adequate information for workers and customers, use of the 'Green Pass', if required.

1.2 Other legislative developments

1.2.1 Work-life balance

The Act 07 April 2022 No. 32 authorises the government to elaborate legislative decrees with the aim of reorganising and strengthening the regulations on family benefits, to promote work-life balance and women's employment.

According to Article 3, the government shall modify the rules on maternity, paternity and parental leave within 12 months. The new rules shall provide for:

- use of parental leave up to the age of 14 of the child;
- role of collective bargaining in defining flexible ways of using leaves, especially for single-parent families;
- paid leave for meetings with teachers (at least 5 hours per year for each child);
- permission for the husband, partner or other second-degree relative to assist the pregnant woman during doctor's visits and maternity-related examinations;
- increase the length of mandatory leave for fathers;
- increase maternity pay.

According to Article 4, the government shall adopt new rules to increase women's employment within 24 months.

1.2.2 Simultaneous university enrolment

Each student can simultaneously enrol in two different bachelor's and master's programmes, even at different universities (Act 12 April 2022 No. 33).

Simultaneous enrolment is also permitted for a bachelor's or master's programme and a PhD programme or specialisation course, except for medical specialisation courses, as well as simultaneous enrolments in a PhD or master's programme and a medical specialisation course.

The simultaneous registration of two degree programmes in the same field of study or in the same master's programme is not permitted, also not at two different universities.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The dispute examined by the CJEU concerned the period prior to the approval of the new Italian rules on honorary magistrates (Legislative Decree 13 July 2017 No. 116).

The new law (Article 1) expressly provides that an honorary magistrate is self-employed, and the performance of his/her functions does not lead to the establishment of a public employment relationship. The honorary magistrate cannot carry out this activity for more than two days a week and receives an allowance, not a salary (Article 23). Consequently, the rules on subordinate employment do not apply. The assignment lasts 4 years and can only be renewed for another maximum 4 years. Temporary rules are envisaged to regulate the activity of magistrates in service at the time of the reform.

The new law was approved to more clearly define the position of honorary magistrates and to address classification doubts that led to the CJEU ruling.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The CJEU's decision in case C-236/20 PG does not have any implications for Latvian law as there is no honorary magistrate system. Latvia only has ordinary judges. Ordinary judges are entitled to a full set of social rights, including the right to paid annual leave (Law on Remuneration for Officials and Employees of the State and Municipal Institutions *(Valsts un pašvaldību institūciju amatpersonu un darbinieku atlīdzības likums)*, Official Gazette No. 199, 18 December 2009, is available here), insurance against all statutory insurance risks (Law on State Social Insurance (*likums 'Par valsts sociālo apdrošināšanu'*), Official Gazette No. 274/276, 21 October 1997, is available here) and the right to a long-service occupational pension (Judges' Long-term Service Pension Law (*Tiesnešu izdienas pensiju likums*), Official Gazette No. 107, 07 July 2006, is available here).

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

In case C-236/20, the CJEU (First Chamber) ruled as follows:

Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time, Clause 4 of the Framework Agreement on Part-time Work, concluded on 06 June 1997 and which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on Part-time Work concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 98/23/EC of 07 April 1998, and Clause 4 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999 and which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP must be interpreted as precluding national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate comes within the definition of 'part-time worker' within the meaning of the Framework Agreement on Part-time Work and/or 'fixed-term worker' within the meaning of the Framework Agreement on Fixed-term Work and is in a comparable situation to that of an ordinary judge.

Clause 5(1) of the Framework Agreement on Fixed-term Work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of four years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship.

According to the judgment, the following requirements are thus decisive for the accrual of the claims in question:

- The magistrate comes within the definition of 'part-time worker' within the meaning of the Framework Agreement on Part-time Work and/or 'fixed-term worker' within the meaning of the Framework Agreement on Fixed-term Work;
- the magistrate is in a comparable situation to that of an ordinary judge;

- this assumes that the magistrate, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration (CJEU C-236/20 No. 30).

Under Liechtenstein law, there are no judges directly comparable to the Italian *giudice di pace*. Nevertheless, there are substitute, part-time and ad hoc judges.

The Administrative Court and the Constitutional Court consist of five judges and five substitute judges. The term of office of judges and substitute judges is five years. If a judge is prevented from attending a hearing, he or she shall be represented by a substitute judge for the given case (Article 102(1), (2), (4) and Article 105 of the Constitution (Verfassung des Fürstentums Liechtenstein, LR 101); Article 3(1) of the Act on the Constitutional Court (Gesetz über den Staatsgerichtshof, StGHG, LR 173.10)).

There are part-time judges at the Criminal Court, Juvenile Court, High Court, and Supreme Court (Article 4(1), Article 18(1), and Article 22 of the Act on the Court Organisation (Gesetz über die Organisation der ordentlichen Gerichte, Gerichtsorganisationsgesetz, GOG, LR 173.30)).

Part-time judges are appointed for a term of five years. Their appointment is terminated by the expiration of their term of office, dismissal from service by the service court, disciplinary penalty of dismissal from service, loss of office under the Criminal Code, or loss of the required nationality.

Ad hoc judges are appointed at the Court of First Instance, the High Court and Supreme Court. If a court is significantly impaired in its function, an ad hoc judge can be appointed at the request of the responsible court president. The appointment of ad hoc judges may be limited in time or for the completion of one or more cases. An ad hoc judge may be appointed if he or she meets the appointment requirements of the judge to be replaced.

The Judges Services Act contains regulations on paid annual leave and other types of paid and unpaid leave, but only for full-time judges (Article 2(1), Article 3, Article 16(2), Article 28, and Article 32(2) of the Judges Services Act (Richterdienstgesetz, RDG, LR 173.02)).

Part-time and ad hoc judges are entitled to an attendance fee for attending a hearing and a lump sum for the settlement of a case (Article 6a(1) of the Act on Remuneration of Members of the Government and Commissions as well as Part-time and Ad-hoc Judges (Gesetz über die Bezüge der Mitglieder der Regierung und der Kommissionen sowie der nebenamtlichen Richter und der Ad-hoc-Richter, LR 174.60)).

The general law on state personnel is not applicable to judges (Article 1 of the State Personnel Act (Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz, StPG, LR 174.11)).

Only the aforementioned statutory provision provides for paid annual leave for full-time judges. Under national law, part-time and ad hoc judges are not employed under an employment relationship. Theoretically, it cannot be completely excluded that such a judge could fall under the broad concept of an employee within the meaning of the EU/EEA law addressed here. A general statement on this is not possible. This could only be assessed on the basis of a concrete case. Thus, the CJEU also decided that it is for the national court to verify whether the aforementioned requirements have been met. However, it can be assumed that in a specific case not all the conditions mentioned by the CJEU would be fulfilled. One of these conditions is that the magistrate performs real and genuine services which are neither purely marginal nor ancillary. The part-time and ad hoc judges in Liechtenstein will, in principal, not meet this requirement. Since Liechtenstein is a relatively small country (38 650 inhabitants on 31 December 2019), there are relatively few contentious cases to be decided by the courts. These cases are primarily handled by ordinary judges.

According to Italian law in the main proceedings, a fixed-term employment relationship can be successively renewed a maximum of three times, each renewal being for a duration of four years, for a total duration that does not exceed 16 years. Furthermore, the corresponding law does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship.

According to Section 1173a Article 44a(1) of the Civil Code (*Allgemeines bürgerliches Gesetzbuch*, LR 210), a fixed-term employment relationship may be extended a maximum of three times up to a total duration of five years. Furthermore, in case of a longer duration, the fixed-term employment relationship will be considered to be one of indefinite duration.

Pursuant to Article 13 of the State Personnel Act (*Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz*, StPG, LR 174.11), a fixed-term employment relationship shall be established for a maximum period of three years. In justified cases, the government may extend a fixed-term employment relationship by a maximum of two additional years.

These regulations are not comparable to Italian law in the main proceedings and do not conflict with CJEU C-236/20. The conversion of an abusively extended fixed-term employment relationship into one of indefinite duration constitutes an effective and dissuasive sanction.

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

A district court has recognised the mandatory application of Lithuanian labour law to Ryanair employees performing services in Lithuania, regardless of the chosen applicable Irish labour law.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Applicable legislation

Kaunas district court, No. e2-725-475/2022, 29 March 2022

The Kaunas District Court (court of first instance) has issued a judgment in the Ryanair case involving multiple plaintiffs employed by one of Ryanair company's Irish subsidiaries, Ryanair Designated Activity Company, which perform their activities from Kaunas based in Lithuania. The parties agreed on the applicable law of the Republic of Ireland and established contractual jurisdiction of Irish courts in all disputes. The contracts stipulated that the staff would perform their duties on aircraft registered in Ireland, they were involved in the in-flight handling of the aircraft and of the passengers performed onboard the aircraft. However, the employees started working and would return to Kaunas Airport after work, and their contracts stipulated that they could not live more than 1 hour away from the Kaunas Airport. On 25 May 2020, the employer submitted a notice to the plaintiffs working at the Kaunas Airport base, stating that on 30 June 2020, it was suspending its activities at Kaunas, and that the employment relationships of the employees would be transferred to another subsidiary, namely Ryanair Sun S. A. (Buzz), which would start operating at Kaunas Airport from 01 July 2020 onwards. Later, instead of transferring to Ryanair Sun S. A. (Buzz), the Ryanair Designated Activity Company offered to work for Ryanair Sun S.A. (Buzz) for twice the salary. On 02 June 2020, it informed the employees of possible redundancies, as the Ryanair Designated Activity Company would no longer be operating flights from Kaunas Airport. On 12 June 2020, the defendant informed the applicants of its forthcoming transfer to London Stansted Airport, following the mobility clause in the contract. Workers refused to work at a new workplace in London and Ryanair Designated Activity Company filed for their dismissal but (accidentally) did this twice: the first time under Article 57 (1) (1) of the Labour Code of the Republic of Lithuania (due to redundancy) and the second time for gross misconduct (not appearing at Stansted Airport (London)). The dismissed employees applied for unlawful dismissal, a continuation of employment and, in addition, severance pay under Lithuanian law, compensation for delay in payment under Lithuanian law, and non-granted extended leave under Lithuanian law.

Initially, the Lithuanian court did not recognise their competence to hear the case, but the court of appeal (Kaunas Regional Court) pointed out the necessity to apply Brussels Regulation No. 1215/2012 which established that Kaunas was the permanent place of work of the employees concerned. The Court also rightly acknowledged the mandatory

application of Lithuanian labour law (Rome I Regulation No. 593/2008) as part of the legal regime of employees performing their services in Lithuania, regardless of the chosen applicable Irish labour law. The work of the mobile aircraft crew was recognised by the Court as an activity where the location of the 'base' was deemed the employees' permanent place of work. Despite some differences between the formal model of business of both Irish subsidiaries, the Court established the preconditions of a transfer of undertaking and deemed the plaintiff's dismissals unlawful. In addition, it also deemed the dismissal of employees on the basis of refusal to change their place of work illegal, which was permissible according to the contract. The Court also upheld other financial claims but assessed the non-pecuniary damage at EUR 200.

The Court's decision is the first genuine attempt to apply both the Brussels Regulation and the Rome I Regulation to cross-border employment in Lithuania. The Court rightly recognised the permanent place of work of mobile workers based on the assessment of all of the facts. The judicial assessment of the fact that a transfer of undertaking had taken place and the unlawfulness of the dismissals may also be convincing. Problems may arise when an 'easy hand' approach with regard to the application of Lithuanian 'mandatory' provisions is taken ('Provisions that cannot be derogated from by agreement', Article 8 (1) of Regulation 593/2008) concerning the mobility clause, severance pay, and compensation for delay in payment of remuneration due. The legal status of the statutory annual leave of pilots (40 working days) may also raise questions, i.e. whether this special type of 'prolonged' annual leave falls within the notion of 'minimum leave' in the sense of these mandatory provisions.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The part of the *ratio decidendi* in case C-236/20 is not relevant for Lithuania, as there are no category of honorary judges in Lithuania. However, the second part of the preliminary judgment reiterates the prohibition of repeated conclusions of fixed-term contracts, without providing for any other means of protection. The possibility to conclude an unlimited number of fixed-term agreements in Lithuania is provided by Article 68 (4) of the Labour Code, which consolidates the possibility of concluding fixed-term employment contracts, the maximum term of which may not exceed five years, with elected or appointed employees, employees of creative professions and researchers, employees appointed by collegial electoral bodies or other employees for the protection of the public interest, if this possibility is prescribed by law (e.g. university teachers). Such agreements may be concluded or extended on the basis established by law and the restrictive provisions do not apply to them.

4 Other Relevant Information

4.1 Labour Code reform

Parliament is debating the number of amendments to the Labour Code, the review of which will be provided in the June 2022 Flash Report.

Luxembourg

Summary

(I) A bill allowing jobseekers to take on temporary assignments within the context of the fight against the pandemic has been approved.

(II) An agreement between the government and social partners has been concluded to modulate the national system of automatic wage increases.

(III) A special leave will apply for foster families.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Relief measurers for the unemployed

Bill 7931 has been adopted (see December 2021 Flash Report).

This law allows jobseekers to take on temporary assignments within the context of the fight against the pandemic.

To effectively mitigate the COVID-19 pandemic, many unemployed persons who receive social security benefits have been or are being assigned to work in temporary occupations (*occupation temporaire indemnisée,* OTI), which includes distributing free rapid antigen tests to the public, conducting the CovidCheck at the workplace, etc.

The maximum duration of such temporary assignments for unemployed persons under the age of 50 years is 6 months. If, based on the recommendation of ADEM, an occupation falls within the context of fighting COVID-19, any relevant assignment is not included in the calculation of this duration. The law applies retroactively from 01 October 2021 and will cease to have effect on 30 June 2022.

Reference: *Loi du 1er avril 2022 portant dérogation temporaire à l'article L. 523-1 du Code du travail.*

1.1.2 Parental leave

As discussed in earlier Flash Reports, derogation measures were introduced to extend family leave (*congél pour raisons familiales)* for parents in response to the pandemic situation which included closure of schools and other childcare facilities.

After various extensions, these temporary measures were due to expire on 30 April 2022.

A bill, which was already adopted in the first session, extends these temporary measures until 23 July 2022. This date was chosen in view of the large number of cross-border employees working in Luxembourg and taking the start of holidays not only in Luxembourg (15 July) but also in neighbouring countries into account.

Reference: *Projet de loi n° 7990 portant modification de la loi modifiée du 22 janvier 2021 portant : 1° modification des articles L. 234-51, L. 234-52 et L. 234-53 du Code du travail ; 2° dérogation temporaire aux dispositions des articles L. 234-51, L. 234-52 et L. 234-53 du Code du travail, is available here.*

1.2 Other legislative developments

1.2.1 Teleworking

Bill 7862 has been adopted. In 2020, the social partners adopted a Convention on Teleworking, which was declared generally applicable in all companies.

Clause 4 of this Convention provides that in companies with a staff delegation (*délégation du personnel;* with 15 employees and more), the introduction and/or modification of a distinct (i.e. internal to the company) teleworking arrangement (*régime spécifique de télétravail)* must be subject to a prior information and consultation procedure. In companies with 150 or more employees, certain issues are subject to co-decision, meaning that the delegation's agreement is necessary. The introduction of a distinct teleworking regime is subject to co-decision.

In Clause 14 of the Convention, the social partners invited the legislator to introduce various legislative changes, notably with reference to the delegation's competence and occupational safety and health.

The draft law, just like the law that has been passed, only covers the staff delegation aspect. Articles 414-3 and 414-9 have been adopted accordingly.

This law does not introduce any change to positive law, since the Convention as such could extend the delegation's competences.

References: *Règlement grand-ducal du 22 janvier 2021 portant déclaration d'obligation générale de la convention du 20 octobre 2020 relative au régime juridique du télétravail, is available here; Loi du 1er avril 2022 portant modification des articles L. 414-3 et L. 414-9 du Code du travail.*

1.2.2 Wage indexation

To address monetary inflation, meetings were held in March 2022 within the Tripartite Coordination Committee (*comité de coordination tripartite)*, which brings together government representatives, employer representatives, as well as trade union representatives from the private sector (OGBL and LCGB) and the public sector (CGFP).

One central issue was the automatic wage indexation system in Luxembourg: for every 2.5 per cent increase in the cost of living index, wages must compulsorily be increased by the same percentage. Yet after a long period of low inflation, there was a risk that price developments would result in several index bands following each other in short intervals. One index fell on 01 April 2022 and was applied in accordance with the legal mechanism. The next 2.5 per cent increase is likely to fall within the next few months. Employers view this as an unbearable financial burden for companies.

Largest trade union, OGBL, refusing to sign the agreement on a modulation of the wage indexation system. OGBL called for demonstrations on 01 May to express its opposition.

However, an agreement was signed with the other negotiating parties and Bill No. 8000 has been introduced to implement it.

The agreement comprises a large number of measures, including on rents (increase in rent subsidies, temporary rent freeze), purchasing power (reduction in fuel prices), energy measures (increase in subsidies), assistance for businesses, etc.

The only measure that directly concerns labour law is the modulation of the wage indexation system. In summary, the agreement covering the period from 01 April 2022 to 01 April 2024 is as follows:

- The next index after the one of May/April 2022 will be postponed to 01 April 2023.
- Twelve months will then have to elapse between salary increments.

- Any index not applied under this arrangement will be applied on 01 April 2024.

The loss of purchasing power resulting from these changes is intended to be offset by a tax credit. This is degressive and employees with a gross annual income exceeding EUR 100 000 do not benefit from it.

Ultimately, therefore, the system has the dual effect that the financial burden of indexation is temporarily shifted from companies to the state budget and that the benefit remains limited to salaries below EUR 100 000. Until now, the indexation has applied without limitations, regardless of salary.

Reference: *Projet de loi n° 800 portant transposition de certaines mesures prévues par «l'Accord entre le Gouvernement et l'Union des Entreprises luxembourgeoises et les organisations syndicales LCGB et CGFP» du 31 mars 2022 et modifiant:*

1° l'article 3, paragraphe 7, de la loi modifiée du 25 mars 2015 fixant le régime des traitements et les conditions et modalités d'avancement des fonctionnaires de l'Etat;

2° le titre I de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu;

3° le Code de la sécurité sociale;

4° la loi modifiée du 12 septembre 2003 relative aux personnes handicapées;

5° la loi modifiée du 23 juillet 2016 portant modification 1. du Code de la sécurité sociale; 2. de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu, et abrogeant la loi modifiée du 21 décembre 2007 concernant le boni pour enfant;

6° la loi modifiée du 28 juillet 2018 relative au revenu d'inclusion sociale; et

7° la loi modifiée du 24 juillet 2014 concernant l'aide financière de l'État pour études supérieures, is available here.

1.2.3 Foster care leave

Bill 7994 is part of a more comprehensive reform of child protection regulations, including a clearer separation between the legislative and judicial level of protective and repressive functions (juvenile criminal law; *droit penal des mineurs*). Specifically, the bill formalises the reception of minors and young adults into a foster family (*famille d'accueil)*.

The only aspect of the bill that relates to labour law is the introduction of foster care leave (*congé d'accueil)*, which in this case is 10 days.

This leave can be split up and must be taken within two months of the minor's arrival. In principle, the employee's wishes are respected, unless the company's needs conflict with it. The employee must give one week's notice to request this leave. The state budget covers the full cost of the employee's leave.

If the foster family consists of several carers, only one of them is entitled to this leave.

Reference: *Projet de loi n° 7994 portant aide, soutien et protection aux mineurs, aux jeunes aux familles et portant modification : 1. du Code du travail, is available here.*

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

This CJEU's ruling has no direct implications for Luxembourg.

The Justices of the Peace (*juge de paix)* in Luxembourg are professional magistrates who benefit from the same regime as other magistrates, i.e. a regime which in some respects is even more favourable than the general civil service statute. The few magistrates who serve as assessors in labour and social courts do not work with such regularity that they could be considered "employees" within the meaning of the Directives in question.

As for the judgment's second statement of principle, Luxembourg's law is very restrictive as regards fixed-term contracts, since the Directive's three anti-abuse restrictions are applied cumulatively. A temporary contract can only be concluded for specific and non-durable tasks, only two renewals are possible and the total duration may not exceed 24 months. For specific assignments, the number of renewals and total duration are not limited (Article L. 122-5(3)), but the constraint that it can only be concluded for a specific and non-durable assignment persists.

In any case, the sanction of requalifying a fixed-term contract into one of indefinite duration (Article L. 122-9) applies to all types of contracts. There is therefore always the possibility of sanctioning the abusive use of fixed-term contracts. However, judicial practice raises the question whether such requalification is really effective in dissuading employers.

4 Other Relevant Information

Nothing to report.

Malta

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

This judgement addressed the potential inequality in the treatment of different types of judges who perform (though not identical) services, with the main difference seeming to only be in the way the judges are recruited.

The main point in this case hinges on the fact whether the different modes of recruitment of the two categories of judges is sufficient to justify a difference in treatment with respect to social security, leave and pension. However, the Court went further and stated that, irrespective of the mode of appointment and the different nature of the duties, if the honorary magistrates are considered 'fixed-term workers' and 'part-time workers', Article 7 of Directive 2003/88, Clause 4 of the Framework Agreement on Part-time Work and Clause 4 of the Framework Agreement on Fixed-term Work preclude any national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship. It concluded this without determining whether there was indeed a justification for the difference in treatment.

In its reply to the first question, the Court effectively determined that, irrespective of any objective grounds justifying the difference in treatment, the right to leave, pension and social security are so intrinsic to the employment relationship that no amount of objective justification can ever justify the total exclusion of such employment conditions, particularly in case of part-time and fixed-term employment. The element of 'objective justification' seems to have lost much of its importance and, instead, the focus of the Court was on the status of the workers themselves which warranted such treatment.

This interpretation of the Court appears to be more teleological than being dictated by the rigours of the Directives since magistrates and the ordinary judges are not the same and there could in reality be levels of differences that could be objectively justifiable. The judgment shows that the CJEU will not take kindly to any superficial differences between classes of workers and that, in substance, if they are part-time or fixed-term workers, they are entitled to social security, pension and leave, if only pro rata tempore.

With respect to the third question, the Court's reply was also rather unsurprising. Member States' laws still attempt to circumvent the effects of the prohibition of concluding successive fixed-term contracts.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) A favourable payment arrangement has been introduced for entrepreneurs with outstanding tax debts due to the pandemic.

(II) A draft bill for a new Pensions Act has been presented.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Payment arrangement for outstanding tax debts

Most of the generic COVID-19 support measures have ended. However, one type of generic support still exists in the form of a favourable payment arrangement for outstanding tax debts. For example, the tax debt can be repaid within five years and long payment terms also apply to other repayment plans. The purpose is to alleviate the burden for businesses affected by the pandemic.

1.2 Other legislative developments

1.2.1 Pensions Act

Over the past few years, the government and social partners have been working on new pension legislation as a result of the 2019 pension agreement. This has led to a draft bill for a New Pensions Act that was presented on 29 March 2022. The new legislation aims at making pensions more flexible and seeks to align pensions with economic developments. Additionally, the new pension system is designed to be better suited for the current labour market as it takes employees who switch employers into account, whereas the current system is designed for the traditional situation (employees primarily working for the same employer for a long time). The usual contract type will change from defined benefits to defined contributions. This could lead to more transparency for participants with regard to their pension incomes.

The new pension rules are expected to apply from 01 January 2023. However, the draft bill has not yet been adopted and could very well be modified in the process. An update will be provided when further steps have been taken in the legislation process.

2 Court Rulings

2.1 Relationship clause

Court of Appeal Den Bosch, ECLI:NL:GHSHE:2022:1173, 12 April 2022

An employee who violated a relationship clause that was agreed on in the termination agreement has been ordered to pay a fine of EUR 224 630. This is an exceptionally high amount. However, the former employer was able to demonstrate the amount of damages suffered as a result of the violation. The Court noted that the amount of the fine is substantial, but when ruling on the request to reduce the fine, it further ruled that the employee had not provided sufficient insight into his financial situation to warrant a reduction of the fine. The decision is noteworthy given that this restrictive regulation might be deemed an obstacle to the employee to find other forms of work (although it does not concern a non-competition clause, but a relationship clause that was rather restrictive).

2.2 Mandatory training

Court of Appeal Arnhem-Leeuwarden, ECLI:NL:GHARL:2022:2449, 29 March 2022

In this judgment, the Court stated that mandatory training qualifies as working time under the Dutch Working Time Act. However, that does not mean that this time also falls within the definition of working time as specified in the individual employment contract or collective labour agreement. This is relevant for establishing whether or not working time also qualifies as overtime (with a possible right to overtime payment, etc.). In the present case, if the training hours fall outside the employee's agreed working hours, this does not fall under the overtime rule referred to in Article 22 of the relevant collective labour agreement.

Overtime is considered working time for the purposes of the Working Time Act, but whether or not an employee is required to perform overtime (given that it lies within the limits of maximum working time) or what payment is due when overtime work is performed, is not regulated. Overtime is often regulated in an employee handbook, in a collective labour agreement or in the employment contract itself. Additionally, the obligation to work overtime hours can be based on Article 7:611 Dutch Civil Code, which stipulates the duty to act as a 'good employee'.

2.3 Unpaid leave

District Court of The Hague, ECLI:NL:RBDHA:2021:16044, 29 November 2021

This judgment concerned an employee whose fixed-term contract was not extended, with the Court ruling that the employee cannot claim compensation for hours of paid leave that were not taken due to a 'gentlemen's agreement'. During a meeting between the employer and the employees, the employees agreed to voluntarily take all of their outstanding annual leave days and overtime during the time in which the business was closed due to the COVID-19 pandemic. Although the employee had not signed a written agreement to this end, he did not explicitly object to the agreement.

The Court ruled that the gentlemen's agreement was very domineering, and that it was therefore unacceptable according to the standards of reasonableness and fairness to invoke the payment of paid leave that was not taken. According to Dutch law, the principle of reasonableness and fairness is established in Article 6:248 Dutch Civil Code, as well as in the principle of being a good employee (or employer) as laid down in Article 7:611 Dutch Civil Code.

2.4 Employment status

District Court of The Hague, ECLI:NL:RBDHA:2997, 30 March 2022

In the present ruling, the Court applied the King judgment (CJEU case C-214/16, 29 November 2017, Conley King vs. The Sash Window Workshop Ltd and Richard Dollar). The employee had worked since 2008 up to her pension in 2019 on the basis of an 'all-in salary' paid based on actually performed working hours. The Court ruled that the contract was not a service contract, but an employment contract. Referring to the King judgment, the Court decided that the statutorily paid annual leave must be paid out, since the employee never had the opportunity to actually take the paid leave. She had leave, but did not receive any pay while on leave, since the employer was of the opinion that the payment had already been included in her all-in salary. The Court put aside the rules on the statute of limitations (5 years, according to Article 7:642 DCC) based on Article 7 of the Working Time Directive and Article 31 (2) Charter.

This case constitutes a strong example of the effects of the King judgment on self-employed workers who are reclassified as employees at the end of their employment relationship.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

This ruling, which can be considered a sequel to CJEU case C-658/18, 16 July 2020, *UX vs. Governo della Repubblica italiana*, states that the European regulations on paid annual leave and the non-discrimination clauses on part-time and fixed-term work are applicable to magistrates to a certain extent, who are not ordinary judges, and qualify as workers and are in a comparable situation as ordinary judges. Furthermore, national legislation pursuant to which a fixed-term employment relationship can be successively renewed a maximum of three times, each renewal for a duration of four years, for a total duration that does not exceed 16 years in total, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship, is not in accordance with European law, more specifically clause 5 (1) Directive 1999/70.

Under Dutch law, these magistrates are known as *deputy judges ('rechter plaatsvervangers')*. They can be paid and unpaid judges.

The remuneration and working conditions for paid deputy judges are arranged in the same way as for regular judges (Article 9, para. 1, Judicial Officers Legal Status Act). This includes the right to paid annual leave (Article 33b, para. 1, Judicial Officers Legal Status Decree) and remuneration (Article 6a, para. 5 Judicial Officers Legal Status Decree).

Paid deputy judges are designated ('*aanwijzing*') to work an average amount of working hours per week (Article 5f, par. 3, Judicial Officers Legal Status Act). The designation is for a fixed term and can be renewed. The designation and renewal cannot exceed a maximum of 3 years. After 3 years, a new designation cannot be given unless 6 months have passed (Article 3b Judicial Officers Legal Status Decree). This is a similar mechanism used in other legislation that prevents and/or penalises the abuse of successive fixed-term employment contracts (e.g. Article 7:668a DCC implementing Directive 1999/70 (chain rule)).

It seems that for this category of paid deputy judges, the CJEU ruling does not have any implications.

Unpaid deputy judges work on call and receive a certain amount per session and travel costs. The amount per session is laid down in Article 6a, para. 1 Judicial Officers Legal Status Decree. An unpaid deputy judge in a court of appeal is entitled to compensation of EUR 409 per court session. An unpaid deputy judge in a first instance court is entitled to compensation of EUR 344 per session. Several sessions in one day are considered one session (Article 6a, para 2.). When no session/court hearing takes place, a similar compensation can be awarded for drafting a court decision (Article 6a, para (4) and (5)). Furthermore, Article 6a, para. 7 Judicial Officers Legal Status Decree stipulates that travel costs can be reimbursed on the basis of the general rules for reimbursement of travel costs for those working in public service.

Unpaid deputy judges do not fall under the scope of the Dutch Working Time Act nor are there other provisions that stipulate that they are entitled to paid holidays. Other working conditions that apply to regular judges and paid deputy judges are not applicable either. Unpaid deputy judges are (similar to regular judges and paid deputy judges) appointed in the office of judge for life by Royal Decree (Article 2 (1) Judicial Officers Legal Status Act), but there is no further appointment, just the 'on-call' work mentioned before. This is a difference with regular or paid deputy judges, they are appointed or designated for a certain number of hours. Unpaid deputy judges are somehow subordinated to the board of the relevant court. They have more liberty to

refuse a call, but with respect to other elements, mainly organisational aspects such as the duty to report side activities (that in general includes the main occupancy of the deputy judge), the confidentiality that judges should maintain as well as impartiality etc., there is no difference between deputy judges and regular judges.

The CJEU ruling might have implications for this group. Unfortunately, there is no publicly available data on the number of unpaid deputy judges currently active in the Netherlands.

4 Other Relevant Information

4.1 Occupational health and safety

In a letter dated 25 April 2022, the Minister of Social Affairs and Employment announced her intention to ratify ILO Convention C187.

The Minister explained that there is almost unanimity among the EU countries that C187 (as well as C155) should become one of the fundamental conventions. Only the Netherlands has not yet agreed to this, but stands alone on this. The Dutch position can be traced back to an earlier decision (in 2012) to not ratify C187 because the content of that convention was considered to be in conflict with the national division of roles. However, a number of developments have led the Minister to reconsider the position taken in 2012. These developments, in short, are more intensified cooperation between the social partners and the government in developing OSH policies.

Norway

Summary

(I) According to an amendment to the Working Environment Act, trade unions active in an enterprise that hires temporary agency workers have a right to institute proceedings on the legality of the arrangement.

(II) Norway's social security legislation was updated to clarify the country's international obligations according to the EEA agreement and other agreements.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lifting of COVID-19 restrictions

The government's original reopening plan from September 2021 and the reintroduction of national infection control measures in December 2021 have been described in previous Flash Reports. From late January 2022, these measures have been gradually lifted, and the last measures were removed on 12 February (see January, February and March 2022 Flash Reports). However, some national recommendations continue to apply (further details are available here).

The recommendation against non-essential travel abroad has been removed, first for countries in the EEA, Schengen and the UK and some other countries, and subsequently the rest of the world. There might still be some recommendations against travel to specific countries. Updated travel recommendations are available here. The restrictions on who can enter Norway have also been lifted, and the rules that apply are now the same as prior to the outbreak of the pandemic. More information about the current entry rules is available here.

Vaccination rates in Norway are high. By the end of April 2022, 90.7 per cent of the population above the age of 18 years had been vaccinated with two doses. The vaccine has been offered to children aged 16 to 17 years since August 2021, and since September, to children aged 12 to 15 years. A third vaccination dose—a 'booster dose'—has been offered to increasingly larger groups and is now available to everyone above the age of 18 years. People defined as belonging to a medical risk group are being offered a fourth dose. From January, the vaccine has also been offered to children aged 5 to 11 years and a second dose to children aged 12 to 15 years. Updated statistics are available here.

The unemployment rate reached high levels early in the pandemic (see previous Flash Reports). A significant decline started in the spring of 2021 and continued throughout the summer and fall 2021. The rates rose slightly from December onwards but are now slowly declining. By the end of March 2022, there were 109 100 unemployed persons, which amounts to 3.8 per cent of the workforce (the statistics are available here). The numbers for April have not yet been published.

The employment and labour law measures introduced in 2020 and 2021 to mitigate the effect of the COVID-19 crisis have been discussed in previous Flash Reports. The new government that took office in October 2021 has suggested extending several measures (see further October, November and December 2021 Flash Reports, and the January and February 2022 Flash Reports). There have been no further legislative changes in April.

1.2 Other legislative developments

1.2.1 Temporary agency work

The Working Environment Act (LOV-2005-06-17-62), WEA) has been modified, giving a union in an enterprise that hires temporary work agencies an independent right to institute legal proceedings (in its own name) on the legality of the arrangement, regardless of whether the hired worker is a member of the union or wants to institute legal proceedings (LOV-2022-04-08-19). The change will enter into force on 01 July 2022. The rule is controversial. It was introduced for the first time in 2013 by the red-green government (Jens Stoltenberg), abolished by the right-wing government (Erna Solberg) and has now been reintroduced by the new centre-left government (Jonas Gahr Støre).

1.2.2 Social security coordination

Furthermore, changes have been introduced to social security legislation to clarify Norway's international obligations with regard to social security and health services across national borders according to the EEA-agreement and other agreements (FOR-2022-04-22-600). This mainly concerns Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on coordination of social security systems. The changes must be viewed in connection with the misinterpretation of the EU/EEA regulation by the Norwegian authorities and courts over years (the 'NAV scandal'), and are available here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

In general, all categories of judges in Norway benefit from labour law legislation, including the right to paid annual leave and social security and pension schemes. There is no similar category as the Italian honorary magistrates. Even though there are lay judges, who are elements in Norwegian Courts, these judges are generally not in a comparable situation as ordinary judges.

Therefore, the CJEU's conclusion on the interpretation of Directive 2003/88/EC Article 7 and Clause 5 (1) of the Framework Agreement on Fixed-term work annexed to Directive 1999/70 will have limited practical implications for Norwegian law.

4 Other Relevant Information

Nothing to report.

Poland

Summary

A new draft bill transposing the EU Whistleblowing Directive was announced on 12 of April 2022 and includes several new regulations on whistleblowing procedures.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Whistleblowing

On 12 April 2022, the Ministry of Family and Social Policy announced a second draft transposing the EU Whistleblowing Directive. The new draft bill differs significantly from the preceding one.

Obligation to implement internal whistleblowing procedures

Internal procedures will need to be adopted by any entity (legal person) with at least 50 employees. This threshold does not apply to special categories of entities (e.g. financial sector institutions) who must adopt an internal whistleblowing procedure irrespective of their number of workers.

The above obligation requires the adoption of internal (local) whistleblowing procedures (policy and reporting channels) to receive reports and take appropriate follow-up action (including internal investigations). The draft bill sets forth the minimum content of such a whistleblowing policy, including a deadline for confirming receipt of the report (7 days) and providing feedback on the submitted report (3 months), as well as provisions that can be included voluntarily (subject to the company's discretion), including incentives for producing internal reports. It would be possible to use an external provider for the submission of reports and confirm its receipt to the whistleblower (to this end, the local entity would need to sign a separate contract with the provider).

As in the previous draft bill, the option to apply global/ group whistleblowing policies will only be reserved for entities with between 50 and 249 workers, which means that large companies (250+ employees) will be required to implement local whistleblowing procedures, and group policies may only be used as an alternative (where the choice which procedure—local or group—to use belongs to the whistleblower).

Non-compliance with the duty to implement an internal procedure that meets the minimum statutory requirements will be subject to a criminal fine (as there is no indication on its amount, a company—or more specifically its directors—may theoretically be punished with a fine of up to PLN 1 080 000 = approx. EUR 235 000).

Deadline for implementation

Companies with at least 250 workers and those belonging to special categories need to adopt internal whistleblowing procedures within one month from the date of the new act's entry into force (in practice, within three months from its announcement in the official Journal of Laws). The deadline for implementation for entities with 50-249 workers is 17 December 2023.

In practice, companies will have less than 3 months to implement an internal procedure, which must be consulted with the trade union(s) (consultation should last no less than 7 days, but no more than 14 days) and it cannot enter into force earlier than 2 weeks after its announcement to staff members. This means that any elaboration of internal procedures must start soon after the official announcement of the new act and be completed within two months.

It cannot be predicted when the legislative procedure will be completed, but since Poland already received an official notification from the European Commission on 27 January 2022 regarding the lack of transposition of the law and a very short deadline for public consultation (7 days only), it can be expected that the Polish government will speed up the deliberations on the draft bill.

Scope of wrongdoings subject to reporting

The scope of wrongdoings that will be subject to reporting under the draft implementing bill has not changed significantly and includes any infringements of both Polish and EU laws (or actions taken to circumvent the laws) in the area of:

a) public procurement
b) financial sector services, products and markets
c) anti-money laundering and fighting the financing of terrorism
d) safety of products and their compliance with statutory requirements
e) transportation safety
f) protection of the environment
g) protection against radiation and nuclear safety
h) safety of food and animal feed
i) health and welfare of animals
j) public health
k) consumer protection
l) protection of privacy and personal data
m) security of networks and IT systems
n) financial interests of the Polish treasury and of the EU
o) internal EU market, including EU rules on competition, public aid and corporate taxation.

Companies will still have an option to voluntarily extend the scope of wrongdoings that are subject to whistleblowing reporting and accept reports on infringements of their internal regulations / policies and ethical standards, and such reports will be subject to the whistleblowing procedure regime (including that the reporting persons will be protected against retaliation). Unlike the earlier draft bill, the new draft bill does not exclude the reporting of any interpersonal matters or wrongdoings that violate the reporting person's individual rights or interests (e.g. acts of workplace bullying and discrimination).

Whistleblowers (persons entitled to submit reports)

The group of individuals who can file an internal report and thus enjoy protection against retaliation is significantly wider that before.

In the first draft bill, this right was reserved for employees (under employment contracts) only (unless a company decided to allow other individuals to submit such

reports as well). Under the new draft bill, each individual who learns about a wrongdoing in a work-related context may file such a report. This includes, *inter alia*, employees, temporary workers, freelancers (independent contractors), non-employee civil law contractors (workers), shareholders, members of corporate bodies, staff members at the company's business partners, subcontractors and suppliers, interns / trainees and volunteers, irrespective whether any such individual learned about the wrongdoing in the course of recruitment / negotiations (candidates) in the course of cooperation or after its termination.

Protection against retaliation

The reporting person will be protected from the date he/she submits the report in good faith (i.e. has justified reasons to believe that a reported wrongdoing is real on the date of filing the report and is subject to whistleblowing reporting). The draft bill does not address a situation when it is a wrongdoer (culprit) who submits the report.

There will be a general ban on retaliation against whistleblowers, irrespective of their (employment) status, i.e. there will be one standard of protection and claims available to all reporting persons – a whistleblower who suffered retaliation due to submitting a report will be entitled to claim full compensation (damages) and may further request discontinuance of any legal proceedings initiated against him/her (disciplinary, criminal or other).

The most important issue is that if any negative actions are taken against a whistleblower, it will be the company that will have to prove that these are not retaliatory actions, i.e. that there are objective, properly justified reasons unrelated to the submission of the report being the ground for the negative actions (i.e. the so-called reversed burden of proof). In practical terms, it may result in the need to justify any actions that are detrimental to the whistleblower, even though the general statutory laws do not require this (as an example, there is no obligation to justify end of cooperation with an employee during the course of or after the lapse of the probation period, but since such action may be considered retaliation, employers may need to have defence files / provide justification simply because of the potential claims of the whistleblower).

The same protection will be granted to individuals who assist the whistleblower in the reporting process or who are associated with the whistleblower (e.g. co-workers, family members or even an entity owned by or employing the whistleblower).

Persons who deliberately submit a false report will not be protected and may face both civil law claims from persons / companies who suffered damage as a result of such a report (claim for damages not lower than the average remuneration in the sector in which the enterprise is engaged in on the date of the report) and criminal liability (including imprisonment of up to 3 years).

All contractual provisions or internal policies that restrict the right to file a report or to provide for any negative consequences for reporting in good faith will be considered invalid.

Anonymous reporting

A very important change is that the new draft bill excludes the option to submit reports anonymously. This means that each reporting person will be required to disclose at least his/her full name and contact details (address) and the company can leave any anonymous report unverified, unless specific statutory provisions provide otherwise.

As the Polish financial sector regulations and AML laws allow for anonymous reporting, reporting persons do not need to disclose their identity and the financial sector company will still be required to accept such reports under the rules of these laws and the

reporting person will benefit from protection against retaliation (based on these specific regulations, not based on the new whistleblowing act).

Companies can still decide to accept anonymous reports (irrespective of the statutory obligation to do so), but the whistleblowing regime will not apply in that case and the reporting persons will be protected against retaliation based on the general rules of Polish labour or civil laws (which do not provide for specific protection for whistleblowers).

Data protection

Provisions on personal data protection in connection with internal whistleblowing procedures have evolved significantly and been modified. Specifically, the retention periods for reports submitted have been modified – under the current proposal, the personal data processed due to a report having been filed and follow-up actions may be stored no longer than 15 months from the date when a given follow-up action has been completed (e.g. court proceedings or investigation have ended).

The draft bill is available here.

The legislation process is available here.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

There are no equivalent judges to the justices of the peace in the Polish judicial system. The observations expressed in the judgment under review will therefore not have any implications for Polish regulations.

There is, however, an institution of jurors in the Polish judicial system. They differ in nature from justices of the peace. First, they can hardly be considered employees within the meaning of the Framework Agreement on Fixed-term Work or of the Framework Agreement on Part-time Work. The tasks they perform are marginal in nature, as the maximum number of hours of service provided by a juror is 12 days per year (with some exceptions). In addition, jurors do not perform the same tasks as judges (although some tasks are the same), so there is no basis for concluding that the two groups are in a comparable situation.

Consequently, there is no basis for jurors to be entitled to the same rights or rights *pro rata temporis* as judges.

Nor will considerations of the European Court of Justice on limitations to the conclusion of fixed-term contracts have any bearing on the situation in Poland. The limit on fixed-term contracts set in Polish law is more stringent than in the ruling under review. According to the Polish Labour Code, a fixed-term employment contract between the same parties may be concluded for a maximum period of 33 months and the total number of such contracts should not exceed three in total. If the period of employment under a fixed-term employment contract is longer than 33 months or if the number of concluded contracts is greater than three, it is considered that the employee, respectively from the day following the expiration of the above period or from the date of conclusion of the fourth fixed-term employment contract, is employed under an employment contract of indefinite duration.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

The state of emergency was extended until 05 May 2022. Several COVID-19 related restrictions were removed, only some remain for exceptional situations.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 State of emergency

The state of emergency on the Portuguese mainland territory due to the COVID-19 pandemic was extended until 22 April 2022 by Resolution of the Council of Ministers No. 41/2022, of 14 April, and subsequently until 05 May 2022 by Resolution of the Council of Ministers No. 41-A/2022, of 21 April.

1.1.2 Lifting of COVID-19 restrictions

Furthermore, Decree Law No. 30-E/2022, of 21 April lifted some exceptional and temporary measures adopted within the context of the COVID-19 pandemic. Specifically, the obligatory use of facemasks has been eliminated, including in workplaces, except in case of places highly frequented by vulnerable groups such as health establishments, residential structures, continuous care units and public passenger transport. This decree entered into force on 22 April 2022.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

Case C-236/20 concerned the interpretation of *i)* Article 7 of Directive 2003/88/EC, of 04 November 2003, on certain aspects of the organisation of working time, *ii);* Clause 4 of the Framework Agreement on Part-time Work, concluded on 06 June 1997 and which is annexed to Directive 97/81/EC, of 15 December 1997, concerning the Framework Agreement on Part-time Work, and *iii)* Clause 4 of the Framework Agreement on Fixed-term work, concluded on 18 March 1999 and which is annexed to Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work, and the assessment of whether Italian law is compatible with the referred EU law provisions.

The request made to the CJEU is related to a dispute between a *Giudice di pace* (magistrate) and the *Ministero della Giustizia*, the *Consiglio Superiore della Magistratura* and the *Presidenza del Consiglio dei Ministri*, concerning their refusal to recognise that

a *Giudice di pace* is entitled to the legal status of a public sector employee within the judiciary, either on a full-time or part-time basis.

It should be noted that under Italian law, and by contrast to the position of ordinary judges, the *Giudice di pace* are qualified as 'honorary magistrates' and the typical characteristics of an employment relationship in the public sector do not apply to them. Therefore, these magistrates do not have any form of protection for pension and social security purposes, including on matters related to health, maternity and family, or the right to annual leave.

As explained by the CJEU, Clause 4 of the Framework Agreement on Fixed-term Work prohibits, in respect of employment conditions, fixed-term workers from being treated in a less favourable manner than comparable permanent workers on the sole ground that they are employed on a fixed-term contract, unless differentiated treatment is justified on objective grounds. Under the same terms, Clause 4 of the Framework Agreement on Part-time work, as regards employment conditions, part-time workers may not be treated in a less favourable manner than comparable full-time workers solely because they work part time, unless differentiated treatment is justified on objective grounds.

Therefore, if a Giudice Pace is in a comparable situation as an ordinary judge, it must be verified whether there is an objective ground justifying a difference in treatment, namely concerning paid annual leave and the conditions related to retirement pensions.

According to the CJEU, it must be considered that although certain differences in treatment may be justified by differences in the qualifications required and the nature of the duties entrusted to ordinary judges, the complete exclusion of magistrates from any right to leave and from all forms of pension and social security protection is not acceptable in the light of Clause 4 of the Framework Agreement on Fixed-term Work or Clause 4 of the Framework Agreement on Part-time Work.

Therefore, the CJEU ruled that Article 7 of Directive 2003/88/EC, Clause 4 of the Framework Agreement on Part-time Work and Clause 4 of the Framework Agreement on Fixed-term Work

> *"must be interpreted as precluding national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate comes within the definition of 'part-time worker' within the meaning of the framework agreement on part-time work and/or 'fixed-term worker' within the meaning of the framework agreement on fixed-term work and is in a comparable situation to that of an ordinary judge".*

Furthermore, the CJEU held that Clause 5 (1) of the Framework Agreement on Fixed-term Work

> *"must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of four years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship".*

In Portugal, there are no 'honorary magistrates', in the sense of magistrates that are volunteers who provide services on an 'honorary' basis. Apart from judicial magistrates, there are so-called 'Justices of the Peace' ('*Juízes de Paz*') who, however, do not exercise their functions on a voluntary basis and, therefore, should not be deemed as honorary magistrates for this purpose.

The Peace Courts (*Julgados de Paz*) are part of the broader category of alternative means of dispute resolution and are run by Justices of the Peace ('*Juízes de Paz*'). Their

legal status is established in Law No. 78/2001, of 13 July, as amended by Law No. 54/2013, of 31 July (hereinafter referred to as Law No. 78/2001).

Under Article 25 (1) and (2) of Law No. 78/2001, a Justice of the Peace shall be appointed by the Council of Justices of the Peace for a period of five years (until the amendment introduced by Law No. 54/2013, this appointment was limited to a period of three years). Thus, in Portugal, the Justices of the Peace do not exercise jurisdictional functions on a merely occasional or sporadic basis, but on a permanent basis for a fixed-term period (5 years). At the end of this term, the Council of Justices of the Peace may decide, in a reasoned manner, to renew the appointment, taking into account the will expressed by the Justice of the Peace, the convenience of service, the assessment of the merit of the Justice of the Peace, the number of cases initiated and concluded in the Peace Court where he/she exercises his/her functions, as well as the overall assessment of the service provided by him/her (Article 25 (3) of Law No. 78/2001).

Regarding the nature of the relationship established with the Justices of the Peace, Article 29 of Law No. 78/2001 stipulates that *"in matters of duties, incompatibilities and rights, the regime of employees who exercise public functions shall apply subsidiarily to justices of the peace in all matters not incompatible with the present law".*

In light of this provision, a Justice of the Peace holds a legal relationship of public employment, being subject to the rules applicable to employees who perform public functions, namely those foreseen in Law No. 35/2014, of 20 June, as subsequently amended, which contains the legal framework applicable to an employment relationship in public functions ('*Lei Geral do Trabalho em Funções Públicas'*). According to the Portuguese Supreme Court, the Justices of the Peace are *'qualified civil servants, therefore without the status of magistrate'* (please see decision of unification of jurisprudence No. 11/2007, of 25 July 2007).

Based on the above, in Portugal, the Justices of the Peace ('*Juízes de Paz*') are deemed 'workers' for the purposes of Portuguese law, being bound by a public employment relationship. Therefore, they should be covered by the protection granted by the law to the public employees, namely in terms of paid annual leave and pension/ social rights protection.

4 Other Relevant Information

Nothing to report.

Romania

Summary

(I) Parents of quarantined children will be granted care leave.

(II) A new ordinance regulating work in the maritime field transposes Directive (EU) 2018/131.

(III) Pension authorities will also be required to communicate their retirement decision to employers.

(IV) The tax regime for daily allowance granted to employees has been modified.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Care leave

According to Law No. 73/2022 amending and supplementing Government Emergency Ordinance No. 158/2005 regarding leave days and social health insurance benefits, published in the Official Gazette No. 315 of 31 March 2022, employed parents have the right to leave days and allowance for the supervision and care of the child up to the age of 18 years in case quarantine or isolation measures have been ordered for the child. The leave is paid by the state from the budget of the Single National Health Insurance Fund.

1.2 Other legislative developments

1.2.1 Seafarers work

Emergency Ordinance 50/2022 for the regulation of work in the maritime field, published in the Official Gazette of Romania No. 382 of 19 April 2022 transposes Council Directive (EU) 2018/131 of 23 January 2018 into Romanian legislation, implementing the agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF). The object of the regulation is to guarantee every seafarer the right to a safe and secure workplace, in compliance with safety rules, the right to fair employment, decent working and living conditions on board ships and protection of health, medical care, social measures and other forms of social protection.

Following the expiry of the deadline for transposition of the Directive, the European Commission sent a letter of formal notice to the Romanian authorities. Ultimately, the government adopted this piece of legislation after an extension of the transposition term.

1.2.2 Retirement

According to Article 56 c) of the Labour Code, the employment contract ends:

- On the date the conditions of age and contribution period are fulfilled in case of old-age retirement;
- On the date of communication of the retirement decision in the case of early retirement, partial early retirement or old-age pension with the reduction of the standard retirement age.

However, there were situations in practice in which no one (neither the employee nor the Pension Authority) communicated the retirement decision to the employer, so that

it could not fulfil its obligation to register the termination of the contract. This problem was resolved by Law No. 76/2022 supplementing Article 106 of Law No. 263/2010 on the unitary public pension system, published in the Official Gazette No. 333 of 05 April 2022.

The law establishes the obligation of the Pension Authority to communicate the issuance of the retirement decision to the employer within 5 days. Thus, it must notify the employer of the issuance of the decision for old age retirement, early retirement, partial early retirement or retirement on grounds of invalidity. The notification shall include the name and surname of the person, the type of retirement decision, as well as the date of its issuance.

1.2.3 Employees' daily allowance

Law 72/2022 on the cancellation of some fiscal obligations and for the modification of some normative acts, published in the Official Gazette No. 315 of 31 March 2022, introduced a series of changes in the fiscal treatment of travel expenses. The ceiling according to which the daily allowance is not taxable has been modified. In addition, the law provides tax amnesty for the amounts paid to employees as a daily allowance for carrying out a service in another state between 01 July 2015 and 02 April 2022, in case the tax authorities reclassified the daily allowance as salary income.

Also, starting with the income due for the month of May 2022, the mobility allowance will fall under the same tax regime as the daily allowance.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

There are no honorary magistrates in Romania. Both judges and judicial assistants perform their duties based on a paid employment relationship, benefiting from paid annual leave, social protection and social security measures.

According to Article 82 (4) and (5) of the Labour Code, a maximum of 3 fixed-term employment contracts may be concluded successively between the same parties. Fixed-term employment contracts concluded within 3 months of the termination of a fixed-term employment contract shall be considered a successive contract and may not have a duration of more than 12 months each. These provisions apply to both the private and public sectors.

As a result, the Romanian rules appear to be consistent with the provisions of Clause 5(1) of the Framework Agreement on Fixed-term Work, as interpreted by the Court of Justice of the European Union in case C-236/20.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

Nothing to report.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Overtime work

Supreme Court, No. 5Cdo/24/2019, 25 February 2021

Ordered overtime work is also work performed without an explicit order, but with the employer's knowledge and taking over and using the results of the employee's work. Failure to meet the condition of transitionality and urgency of the increased need for work does not mean the loss of the nature of the work performed as overtime work and also does not result in the employee not being entitled to wages and wage benefits for overtime work.

2.2 Remuneration

Supreme Court, No. Cdo/104/2019, 25 February 2021

An employee performing work in the public interest is entitled to remuneration for the activity actually performed, even if the legislation governing the position and activity of the employer does not allow the performance of such activity.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

There are no honorary magistrates in the Slovak Republic. There are judges and lay judges who work for courts. Lay judges are not workers (employees) and no employment relationship exists.

At present, lay judges only perform their duties in criminal matters in senates, which are composed of the president of the Senate (who is always a professional judge) and two lay judges (citizens). In the exercise of their judicial functions, lay judges have the same rights and obligations as judges, except for the power to preside over the Senate. In Slovakia, they only form a Senate in district courts (level of first instance).

The institute of lay judges is regulated in the Constitution of the Slovak Republic. According to Article 142 paragraph 3 of the Constitution, the courts decide in the Senates, unless the act provides that a single judge shall decide the case. The act provides when lay judges (citizens) shall also participate in the Senate's decision-making.

According to Article 148 paragraph 3 of the Constitution, the procedure of appointing lay judges shall be determined by Act No. 385/2000 Coll. on Judges and Lay Judges (as amended).

This Act regulates the position of judges, their rights and obligations, the establishment and termination of the function of a judge, the disciplinary liability of judges, the salaries of judges and their claims after the termination of the performance of their judicial function. It also regulates the position of lay judges among citizens (Article 1 of the Act).

The lay judges are elected by the municipal councils in the district of the competent court among candidates who are citizens. According to Article 139 paragraph 1 of Act No. 385/2000 Coll., a lay judges can be elected if they are a citizen of the Slovak Republic who

a) on the date of election has reached a minimum of 30 years;

b) has full capability to perform legal actions and is capable (in terms of health) of performing the post of lay judge;

c) has not been convicted and has high moral standards guaranteeing that he/she will properly perform the post of lay judge;

d) has permanent residence in the Slovak Republic;

e) agrees with his/her election to a particular court.

According to Article 141 paragraph 1 of the Act, lay judges are elected for a term of four years. On the proposal of the president of the competent court, the lay judge shall be removed from his/her function by the municipal council which elected him/her (Article 141 paragraph 1 letters a/ and b/of the Act). A lay judge may resign (Article 144 of the Act).

According to Article 146 paragraph 7 of the Act, a lay judge may perform his/her function for a maximum of 12 working days in a calendar year, unless a higher number of days for the performance of his/her function requires the nature of the case on which he/she was assigned by the work schedule. Participation in vocational training of lay judges is also considered part of the performance of the function of lay judges (Article 146 paragraph 6 of the Act).

The main legal source is the Labour Code (Act No. 311/2001 Coll.), as amended. The issue is regulated in the legal regulation of 'Fixed-term employment relationships' (Article 48). The Labour Code distinguishes between the extension of a fixed-term employment relationship and repeated fixed-term contracts. A renewed fixed-term employment relationship is one that begins less than six months after the end of the previous fixed-term employment relationship between the same parties (Article 48, paragraph 3).

A fixed-term employment relationship may be agreed for at most two years and may be extended or renewed at most twice within a two-year period. A further extension or renewal of the fixed-term employment relationship to two years or beyond two years may only be agreed for the specific reasons defined in Article 48, paragraph 4, letters a/ - d/ of the Labour Code:

a) substitution of an employee during maternity leave, parental leave, leave immediately linked to maternity leave or parental leave, temporary incapacity for work or an employee who has been given long-term leave to perform a public function or trade union function;

b) the performance of work for which a significant increase in employee numbers for a temporary period not exceeding eight months of the calendar year;

c) the performance of work that is linked to the seasonal cycle, which repeats every year and does not exceed eight months in the calendar year (seasonal work);

d) the performance of work agreed in a collective agreement.

The reason for extensions or renewals of a fixed-term employment relationship under paragraph 4 shall be stated in the employment contract (Article 48 paragraph 5 of the LC).

A further extension or renewal of a fixed-term employment relationship up to two years or beyond two years can be agreed with a teacher in higher education or a researcher in science, research or development if objective reasons exist relating to the nature of the activities of the teacher in higher education or the researcher in science, research or development as stipulated in a special regulation (Article 48, paragraph 6).

According to Article 48 paragraph 1 of the Labour Code, an employment relationship shall be agreed for an indefinite period, if the duration of employment is not explicitly defined in the employment contract or if the legal conditions for concluding an employment relationship for a fixed term have not been met in the employment contract or its amendment. An employment relationship shall also turn into one of indefinite duration if the fixed-term employment relationship was not agreed in writing.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The rules on determining and adjusting the minimum hourly rate for occasional and temporary work of pensioners have been amended.

(II) The Constitutional Court has abrogated the provision that introduced the possibility to raise the salaries of medical doctors and dentists above those prescribed by the legislation regulating salaries in the public sector.

(III) An annex to the sectoral collective agreement for the electrical industry has adjusted the minimum rates of pay.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Lifting of COVID-19 restrictions

A further easing of COVID-19 measures occurred during April 2022. Wearing a face mask and fulfilling the RVT requirement is now only mandatory in the healthcare and the social protection sector (hospitals, senior homes, etc.). A summary overview of valid measures has been published in English on the government website.

1.2 Other legislative developments

1.2.1 Amendments to the Employment Relationships Act

Article 129 of the Employment Relationships Act (*'Zakon o delovnih razmerjih (ZDR-1)'*, OJ RS No. 21/13 et subseq.), which stipulates that workers are entitled to a seniority bonus, the amount of which is determined by a sectoral collective agreement, has been amended (by Article 19 of the Student Status Act *'Zakon za urejanje položaja študentov (ZUPŠ-1)'*, OJ RS 54/22, 20 April 2022). According to the newly added third paragraph of Article 129 of the ZDR-1, periods of temporary and occasional work performed by students may also be taken into account for determining the amount of the seniority bonus.

1.2.2 Pensioners' work

Article 27.c of the Labour Market Regulation Act (*'Zakon o urejanju trga dela (ZUTD)'*, OJ RS No 80/10 et subseq.) was amended in April 2022 (ZUTD-G, OJ RS 54/22, 20 April 2022). This provision sets the rules for determining and adjusting the minimum hourly rate for occasional and temporary work of retired persons and the upper limit of total income for occasional and temporary work in one calendar year. The amount of minimum hourly rate for occasional and temporary work must correspond to the amount of the minimum wage and must be (as the minimum wage) adjusted once per year.

The Minister's Order on the adjustment of the minimum hourly rate and maximum income for temporary or occasional work of pensioners (*'Odredba o višini urne postavke in višini dohodka za opravljeno začasno ali občasno delo upokojencev'*, OJ RS No. 17/22, 11 February 2022) already determined these amounts for the period 01 March 2022 - 28 February 2023. The minimum hourly rate was set to EUR 5.77 (gross) and the maximum income to EUR 8 639.07 annually (gross). This Order has been repealed and will be replaced by the new one (expected in May 2022; until then, the minimum hourly rate determined by this Order continues to apply).

The amended Article 27.c of the ZUTD-1 already determined the new upper limit of total income in one calendar year (EUR 9 237.96) and the new minimum hourly rate will be set by the Minister's Order.

2 Court Rulings

2.1 Wage of medical doctors and dentists

In February 2022, the Constitutional Court stayed the implementation of the provision of the Anti-COVID package of measures from December 2021, which introduced the possibility of raising the salaries of medical doctors and dentists above those prescribed by the legislation regulating salaries in the public sector (Article 48 of the ZDUPŠOP; see December 2021 Flash Report under 1.1., January 2022 Flash Report under 4.2., and February 2022 Flash Report under 2.).

By its decision on the merits, which was made public on 11 April 2022 (Constitutional Court, No. U-I-25/22, 17 March 2022, published in OJ RS No. 52/22, 15 April 2022, pp. 3282-3287), the Constitutional Court abrogated the challenged provision.

The provision that raised the pay ceiling in the single public sector wage system to the benefit of medical doctors and dentists only was challenged before the Constitutional Court by the trade unions. They argued that the maximum wage raise for just one group of public employees had no relation with the emergency COVID-19 measures; they pointed out that this partial intervention in the public sector wage system was adopted without any social dialogue and contrary to the procedure prescribed by the Public Sector Salary System Act, and that by including such a provision in the emergency bill, citizens' right to a legislative referendum had been denied.

In its reasoning, the Constitutional Court emphasised that such a measure was not necessary to alleviate the negative consequences of COVID-19 and that the National Assembly had unjustifiably excluded the legislative referendum and that, the challenged provision was therefore adopted in an unconstitutional procedure.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

This case has no implications for Slovenian law, since there is no such status in Slovenia that would be comparable to the Italian *giudice di pace*.

4 Other Relevant Information

4.1 Collective bargaining

The *'Sindikat finančno računovodskih uslužbencev plačne skupine J'* (Trade Union of Financial Accountants) acceded to two already concluded collective agreements: the Collective Agreement for the Education Sector in the Republic of Slovenia and the Collective Agreement for the Health Care and Social Protection Sector (*'Pristop h Kolektivni pogodbi za dejavnost vzgoje in izobraževanja v Republiki Sloveniji in njenim aneksom',* and *'Pristop h Kolektivni pogodbi za dejavnost zdravstva in socialnega varstva Slovenije in vsem njenim aneksom'*, published in the OJ RS No 54/2022, 20 April 2022, p. 3674).

An Annex to the Collective Agreement for Slovenia's Electrical Industry was published (*'Dodatek h Kolektivni pogodbi za elektroindustrijo Slovenije'*, OJ RS No 49/22, 08 April

2022, p. 3058) adjusting the wages and other payments for workers in the electrical industry.

Spain

Summary

A new type of employment contract was created to address the particularities of research activities.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

1.2.1 Scientific researchers

The recent labour reform of December 2021 reduced the types of fixed-term employment contracts to boost permanent employment. Universities and research centres had complained because a lot of researchers are linked to specific programmes or projects of a defined period, hence the duration of their employment contracts is linked to the duration of the programme or project. The labour reform has removed the contract for a specific assignment or service, which was massively used in this context.

This provision creates a new permanent contract for researchers, which is adapted to the special circumstances of research centres, i.e. the previous fixed-term contracts have to be transformed into this new type of employment contract. It is worth noting that these research centres are public administration bodies, which have to follow specific rules to hire staff. This new contract adapts those rules to make the hiring of researchers easier.

2 Court Rulings

2.1 Video surveillance

Supreme Court, 30 March 2022, ECLI:ES:TS:2022:1233

Traditionally, Spanish law allowed the use of video surveillance to obtain evidence of possible infringements by the worker. Dismissals have often been based on the video surveillance. The rules on data protection (the GDPR and domestic laws) as well as ECHR case law have modified the approach, because the workers had usually not consented to or did not even know they had been recorded. The Constitutional Court, first, and the Supreme Court, later, stated that the worker must be informed of the use of video surveillance for such purposes. If not, the dismissal was null and void because video surveillance violated a fundamental right.

This situation has changed recently, because the Supreme Court modified its doctrine in accordance with the ECHR ruling in cases 1874/13 and 8567/13 of 17 October 2019, *López Ribalda and Others v. Spain*. According to this new approach, if the worker knows there are cameras (e.g. signs indicating surveillance for security reasons) or if the employer has a reasonable suspicion of infringements and there are no other measures to prove them, video surveillance is permissible.

2.2 Dismissal

Supreme Court, 29 March 2022, ECLI:ES:TS:2022:1427

Conventionality control is the analysis of compatibility of national regulations with international standards. In recent years, the Spanish Constitutional Court has confirmed that courts must determine whether the relevant Spanish provision is in line with international standards. If not, this internal provision cannot be applied. This is important not only with regard to EU law, but also to ILO Conventions and the European Social Charter. This was the case in this ruling on a dismissal based on absenteeism, a type of dismissal that the CJEU considers to be in line with EU law (case C-270/2016, 18 January 2016, *Ruiz Conejero*) and the Supreme Court now states that it is also in line with ILO Conventions and the European Social Charter. This type of dismissal is, however, no longer permissible since the issuance of a Royal Decree Law in February 2020.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

Spain's judiciary administration is composed of professional judges. Judges are civil servants and access to judiciary functions requires passing an open competition exam. Justices of the Peace, created in 1855, are an exception. Justices of the Peace are regulated in Articles 99 et ff. of the Judiciary Act and in a Regulation of 1995. A Justice of the Peace (*Juez de Paz*, in Spanish) is to be appointed in each municipality where there is no *Juzgado de Primera Instancia e Instrucción* (Court of First Instance, a real and professional judiciary body), to guarantee the existence of a judiciary body in all municipalities. These Justices of the Peace are elected by the municipality and appointed by the relevant High Court of the Autonomous Community (a 4-year tenure). They perform functions of civil registry, can preside over marriage ceremonies and are competent in civil disputes when the amount claimed does not exceed EUR 90. Until 2015, they had competence in minor criminal offence cases, but a legal reform has changed this so they can cooperate with a criminal court if required, but are no longer "criminal judges" (or judges in criminal affairs), only for civil affairs. There is a draft bill to modernise the judiciary system, which would eliminate Justices of the Peace.

Justices of the Peace are not employees under the scope of application of the Labour Law, nor are they civil servants. They provide special services under very specific rules and lack complete and proper regulation, but they are definitely excluded both from health and safety regulations and social security schemes.

There are no rules on working time for Justices of the Peace. Their regulations only state that they can freely set the time of hearings and that they are entitled to the same leaves as professional judges, i.e. those included in Articles 370 to 377 of the Judiciary Act (annual leave, marriage leave, etc.). That means that they are not required to perform functions during those periods, but receive financial compensation (a fixed amount per year), which does not change, because it is not strictly linked to working time. There are no fixed schedules or particular requirements regarding working time, because the law assumes that the dedication in terms of working time of Justices of the Peace is, in fact, "ancillary and marginal". There is no real monitoring of the workload or tasks. There are statistics on the number of interventions or actions, but there is no specification of the tasks performed or rules to measure working time or to monitor workload.

Recently, there has been some litigation on the employment status of Justices of the Peace with the aim to take this time into account for retirement purposes. The High Courts state (so far) that this is not an employment relationship, and the Justices of the Peace are not included in any social security scheme.

This CJEU ruling will likely not have any implications for Spain, because the situation is very different. In Italy, *Giudice di pace* "carry out judicial duties comparable to those of ordinary judges and, in any event, to those of other civil servants". This is the starting point of the ruling. In Spain, the duties of the *Jueces de Paz* are not the same and they are not comparable with ordinary judges. They are well respected individuals that can contribute to settling minor disputes in rural areas but are based mainly in moral authority.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

The Swedish Labour Court has issued a ruling on working time under the transport workers' collective agreement, outlining the obligations established in Section 5 of the Working Time Act.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Nothing to report.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Working Time

Labour Court, 06 April 2022, AD 2022 no. 20

The Swedish Labour Court has published a decision in a case on working time under a collective agreement in the transportation sector. The employer organised the work (of three employees) so that they worked 45 hours every second week and 35 hours every other second week, with a two-week average of 40 hours per week. The Swedish Transport Workers' Union sued the employer and argued that the 45-hour week required the employer to pay overtime for five hours of additional work (during those weeks). The Labour Court concluded that the Working Time Act, Section 5 (which transposes the Working Time Directive) allows for an ordinary working time of an average of 40 hours per week within a reference period of maximum four weeks. Since the collective agreement did not entail any specific provisions contrary to this, the Labour Court concluded that a reference period of 2 weeks was allowed, and that the employer's application of the differentiated working hours was acceptable.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

The CJEU has concluded that the part-time and fixed-term provisions in EU law preclude national legislation that denies honorary judges the opportunity to paid annual leave (of 30 days per year) and supplementary social protection related to the employment status in proportion to their employment ratio. From a Swedish perspective, the case raises some questions.

Firstly, the 'honorary judges' (*nämndemän*) involved in Swedish criminal and administrative cases (first instance courts and appellate courts) are appointed by political bodies at the local or regional level and do not have a law degree. They have a slightly similar role to juries in the Anglo-Saxon legal tradition, representing public opinion in the judicial system. These judges are only paid a low daily fee and perform this role to some extent as part of their political assignments and have not concluded

an employment contract with the court. They are usually employed elsewhere or have already retired and volunteer for such assignments in their spare time. If these Swedish 'honorary judges' are to be considered employees, it would have consequences for their status in the judiciary system. The fixed-term work Directive's objective of preventing abuse might be a particular problem of the Swedish judiciary system as the 'honorary judges' are appointed by political parties. However, due to the differences between the Swedish 'honorary judges' and the Italian ones, it is difficult to arrive at any conclusion on this issue.

Secondly, the CJEU discusses a 30-day paid annual leave, which neither corresponds with the Swedish Vacations Act (Section 4), which establishes 25 days of annual leave, nor Directive 2003/88/EC, which provides for four weeks of annual leave (in Article 7). The CJEU's discussion on 30 days of paid annual leave is a bit confusing in the light of the Grand Chamber judgment in case TSN, C-609/17 and C-610/17, EU:C:2019:981. Even if that judgment primarily concerned the Charter's direct effect, the Court held that national legislation on leave days exceeding the minimum prescribed in the Working Time Directive is not subject to EU law. Hence, the recent judgment also raises questions on the application of EU law to national legislation exceeding the Directive's minimum requirement.

Further information on such judges in Sweden is available here.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

The government is proposing to amend the Retained EU Law (REUL), which incorporates all of EU law into domestic law.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Honorary magistrates

CJEU case C-236/20, 07 April 2022, Ministero della Giustizia and Others (Status of Italian Magistrates)

In case C-236/20, the Court ruled on two points. In the first, the Court asserted that Article 7 of Directive 2003/88 as well as the relevant provisions of the Part-time Work and Fixed-term Work Directives preclude 'national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate comes within the definition of 'part-time worker' within the meaning of the Framework Agreement on Part-time Work and/or 'fixed-term worker' within the meaning of the Framework Agreement on Fixed-term Work and is in a comparable situation to that of an ordinary judge'.

This has been an issue in the UK as well. In *O'Brien*, the UK Supreme Court ruled that:

> *"The Supreme Court unanimously allows Mr O'Brien's appeal. Recorders are in an employment relationship within the meaning of the Framework Agreement on part-time work and must be treated as 'workers' for the purposes of the 2000 Regulations [on Part-time Work]. No objective justification has been shown in this case for departing from the basic principle of paying a part-time worker the same as a full-time worker calculated on a pro rata temporis basis. Mr O'Brien is entitled to a pension on terms equivalent to those applicable to a circuit judge."*
>
> (see the Supreme Court's press release)

Secondly, the Court ruled:

> *"Clause 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of four years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship."*
>
> (see ibid.)

This would be unlawful under UK law as well. Under UK law, any renewal of a fixed-term contract beyond four years becomes a permanent contract for all workers in the public

and private sectors. This is established in Regulation 8 of the Fixed-term Work Regulations, which provides:

> *"8.—(1) This regulation applies where—*
>
> *(a) an employee is employed under a contract purporting to be a fixed-term contract, and*
>
> *(b) the contract mentioned in sub-paragraph (a) has previously been renewed, or the employee has previously been employed on a fixed-term contract before the start of the contract mentioned in sub-paragraph (a).*
>
> *(2) Where this regulation applies then, with effect from the date specified in paragraph (3), the provision of the contract mentioned in paragraph (1)(a) that restricts the duration of the contract shall be of no effect, and the employee shall be a permanent employee, if—*
>
> *(a) the employee has been continuously employed under the contract mentioned in paragraph 1(a), or under that contract taken with a previous fixed-term contract, for a period of four years or more, and*
>
> *(b) the employment of the employee under a fixed-term contract was not justified on objective grounds—*
>
> *(i) where the contract mentioned in paragraph (1)(a) has been renewed, at the time when it was last renewed;*
>
> *(ii) where that contract has not been renewed, at the time when it was entered into.*
>
> *(3) The date referred to in paragraph (2) is whichever is the later of—*
>
> *(a) the date on which the contract mentioned in paragraph (1)(a) was entered into or last renewed, and*
>
> *(b) the date on which the employee acquired four years' continuous employment. …"*

4 Other Relevant Information

4.1 Brexit

The government announced on 31 January that it was proposing to amend retained EU Law (REUL), the law which incorporates all of EU law into domestic law. According to the press release:

> *"A new 'Brexit Freedoms' Bill will be brought forward by the government, under plans unveiled by the Prime Minister, Boris Johnson, to mark the two-year anniversary of Getting Brexit Done.*
>
> *The Bill will make it easier to amend or remove outdated 'retained EU law' - legacy EU law kept on the statute book after Brexit as a bridging measure – and will accompany a major cross-government drive to reform, repeal and replace outdated EU law.*
>
> *These reforms will cut £1 billion of red tape for UK businesses, ease regulatory burdens and contribute to the government's mission to unite and level up the country.*
>
> *Many EU laws kept on after Brexit were agreed as a messy compromise between 28 different EU member states and often did not reflect the UK's own priorities or objectives – nor did many receive sufficient scrutiny in our democratic institutions."*

Some more information has now been provided by the Brexit Opportunities minister in a letter to the Chair of the House of Commons' European Scrutiny Committee. He says:

> *"The work of the REUL reviews has progressed significantly since I became the Minister for Brexit Opportunities and Government efficiency and it is now nearly complete. This work has successfully resulted in establishing an authoritative baseline of all the REUL held by departments across Whitehall, and has been instrumental in informing the issues with REUL that the 'Brexit Freedoms' Bill will seek to address. I am committed to ensuring that the public can hold the Government accountable for REUL reform and therefore intend to publish the full list of REUL still on the UK statute book. I will ensure this list is published before I introduce the Bill.*
>
> *Following the conclusion of the REUL substance review, my officials are engaged in a REUL status review which seeks to consider the type of REUL that is on the UK's statute book, the status it holds and how it affects and interacts with our own legislation. This review is also feeding into the 'Brexit Freedoms' Bill and will play a crucial role in informing the content of the Bill. This review will be completed prior to the introduction of the Bill.*
>
> *I have been leading on the content of the Bill and have been working closely with the Attorney General. I am in agreement that the Attorney General's involvement is not only instrumental to the Bill, but is also necessary due to its constitutional elements. To this end, she and I hold fortnightly meetings on the content of the Bill and will continue to do so as we progress towards introduction."*

This will be further reported on after the Queen's Speech on 10 May 2022.

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