



# Flash Reports on Labour Law July 2020

Summary and country reports

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

July 2020



**EUROPEAN COMMISSION**

Directorate DG Employment, Social Affairs and Inclusion

Unit B.2 – Working Conditions

Contact: Marie LAGUARRIGUE

E-mail: [Marie.LAGUARRIGUE@ec.europa.eu](mailto:Marie.LAGUARRIGUE@ec.europa.eu)

European Commission

B-1049 Brussels

**Europe Direct is a service to help you find answers  
to your questions about the European Union.**

**Freephone number (\*):**

**00 800 6 7 8 9 10 11**

(\*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

#### **LEGAL NOTICE**

The contents of this publication are the sole responsibility of the author(s). The contents of this publication do not necessarily reflect the position or opinion of the European Commission. Neither the European Commission nor any person/organisation acting on behalf of the Commission is responsible for the use that might be made of any information contained in this publication.

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

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

Luxembourg: Publications Office of the European Union, **2020**

ISBN **ABC 12345678**

DOI **987654321**

© European Union, **2020**

Reproduction is authorised provided the source is acknowledged.

Country	Labour Law Experts
Austria	Martin Risak Daniela Kroemer
Belgium	Wilfried Rauws
Bulgaria	Krassimira Sredkova Albena Velikova-Stoyanova
Croatia	Ivana Grgurev
Cyprus	Nicos Trimikliotis
Czech Republic	Nataša Randlová
Denmark	Natalie Videbaek Munkholm Mette Soested
Estonia	Gaabriel Tavits
Finland	Ulla Liukkunen
France	Francis Kessler
Germany	Bernd Waas
Greece	Costas Papadimitriou
Hungary	Tamás Gyulavári
Iceland	Leifur Gunnarsson
Ireland	Anthony Kerr
Italy	Edoardo Ales
Latvia	Kristine Dupate
Liechtenstein	Wolfgang Portmann
Lithuania	Tomas Davulis
Luxemburg	Jean-Luc Putz
Malta	Lorna Mifsud Cachia
Netherlands	Hanneke Bennaars Suzanne Kali
Norway	Marianne Jenum Hotvedt Alexander Næss Skjønberg
Poland	Leszek Mitrus
Portugal	José João Abrantes Isabel Valente Dias
Romania	Raluca Dimitriu
Slovakia	Robert Schronk
Slovenia	Barbara Kresal
Spain	Joaquín García-Murcia Iván Antonio Rodríguez Cardo
Sweden	Andreas Inghammar
United Kingdom	Catherine Barnard



## Table of Contents

Executive Summary .....	1
Austria .....	6
1 National Legislation .....	6
2 Court Rulings .....	6
3 Implications of Rulings of the CJEU and the ECHR .....	8
4 Other Relevant Information .....	9
Belgium .....	10
1 National Legislation .....	10
2 Court Rulings .....	10
3 Implications of CJEU Rulings and ECHR .....	10
4 Other Relevant Information .....	12
Bulgaria .....	13
1 National Legislation .....	13
2 Court Rulings .....	13
3 Implications of CJEU Rulings and ECHR .....	13
4 Other Relevant Information .....	14
Croatia .....	15
1 National Legislation .....	15
2 Court Rulings .....	17
3 Implications of CJEU Rulings and ECHR .....	18
4 Other Relevant Information .....	19
Cyprus .....	20
1 National Legislation .....	20
2 Court Rulings .....	20
3 Implications of CJEU Rulings and ECHR .....	22
4 Other Relevant Information .....	23
Czech Republic .....	24
1 National Legislation .....	24
2 Court Rulings .....	26
3 Implications of CJEU Rulings and ECHR .....	28
4 Other Relevant Information .....	30
Denmark .....	30
1 National Legislation .....	30
2 Court Rulings .....	30
3 Implications of CJEU Rulings and ECHR .....	30
4 Other Relevant Information .....	34
Estonia .....	35
1 National Legislation .....	35
2 Court Rulings .....	35



3	Implications of CJEU Rulings and ECHR .....	35
4	Other Relevant Information .....	36
Finland .....		37
1	National Legislation .....	37
2	Court Rulings .....	38
3	Implications of CJEU Rulings and ECHR .....	38
4	Other Relevant Information .....	38
France .....		39
1	National Legislation .....	39
2	Court Rulings .....	42
3	Implications of CJEU Rulings and ECHR .....	51
4	Other Relevant Information .....	52
Germany .....		54
1	National Legislation .....	54
2	Court Rulings .....	57
3	Implications of CJEU Rulings and ECHR .....	57
4	Other Relevant Information .....	58
Greece .....		59
1	National Legislation .....	59
2	Court Rulings .....	59
3	Implications of CJEU Rulings and ECHR .....	59
4	Other Relevant Information .....	60
Hungary .....		61
1	National Legislation .....	61
2	Court Rulings .....	62
3	Implications of CJEU Rulings and ECHR .....	62
4	Other Relevant Information .....	63
Iceland .....		64
1	National Legislation .....	64
2	Court Rulings .....	64
3	Implications of CJEU Rulings and ECHR .....	64
4	Other Relevant Information .....	64
Ireland .....		65
1	National Legislation .....	65
2	Court Rulings .....	65
3	Implications of CJEU Rulings .....	65
4	Other Relevant Information .....	65
Italy 67		
1	National Legislation .....	67
2	Court Rulings .....	68
3	Implications of CJEU Rulings and ECHR .....	68



4	Other Relevant Information .....	68
Latvia .....		69
1	National Legislation .....	69
2	Court Rulings .....	69
3	Implications of CJEU Rulings and ECHR .....	69
4	Other Relevant Information .....	70
Liechtenstein .....		71
1	National Legislation .....	71
2	Court Rulings .....	72
3	Implications of CJEU Rulings and ECHR .....	72
4	Other Relevant Information .....	73
Lithuania .....		74
1	National Legislation .....	74
2	Court Rulings .....	75
3	Implications of CJEU Rulings and ECHR .....	75
4	Other Relevant Information .....	75
Luxembourg .....		76
1	National Legislation .....	76
2	Court Rulings .....	77
3	Implications of CJEU Rulings and ECHR .....	77
4	Other Relevant Information .....	77
Malta .....		78
1	National Legislation .....	78
2	Court Rulings .....	78
3	Implications of CJEU Rulings and ECHR .....	78
4	Other Relevant Information .....	79
Netherlands .....		80
1	National Legislation .....	80
2	Court Rulings .....	81
3	Implications of CJEU Rulings and ECHR .....	81
4	Other Relevant Information .....	83
Norway .....		84
1	National Legislation .....	84
2	Court Rulings .....	85
2	Implications of CJEU Rulings and ECHR .....	85
4	Other Relevant Information .....	86
Poland .....		87
1	National Legislation .....	87
2	Court Rulings .....	88
3	Implications of CJEU Rulings and ECHR .....	88
4	Other Relevant Information .....	89





Portugal .....	90
1 National Legislation .....	90
2 Court Rulings .....	94
3 Implications of CJEU Rulings and ECHR .....	94
4 Other Relevant Information .....	96
Romania .....	97
1 National Legislation .....	97
2 Court Rulings .....	98
3 Implications of CJEU Rulings and ECHR .....	98
4 Other Relevant Information .....	98
Slovakia .....	99
1 National Legislation .....	99
2 Court Rulings .....	100
3 Implications of CJEU Rulings and ECHR .....	100
4 Other Relevant Information .....	101
Slovenia .....	102
1 National Legislation .....	102
2 Court Rulings .....	104
3 Implications of CJEU Rulings and ECHR .....	105
4 Other Relevant Information .....	106
Spain .....	107
1 National Legislation .....	107
2 Court Rulings .....	107
3 Implications of CJEU Rulings and ECHR .....	108
4 Other Relevant Information .....	108
Sweden .....	109
1 National Legislation .....	109
2 Court rulings .....	109
3 Implications of CJEU Rulings and ECHR .....	110
4 Other Relevant Information .....	110
United Kingdom .....	111
1 National Legislation .....	111
2 Court Rulings .....	112
3 Implications of CJEU Rulings and ECHR .....	112
4 Other Relevant Information .....	113

## Executive Summary

### National level developments

In July 2020, **extraordinary measures triggered by the COVID-19 crisis** still dominated the development of labour law in many Member States and European Economic Area (EEA) countries.

This Summary is therefore again divided into an overview of developments relating to the crisis measures, and a second part summing up other labour law developments that are of particular relevance for the transposition of EU labour law.

### Developments related to the COVID-19 crisis

#### Measures to diminish the risk of infection in the workplace

**All countries** still have measures in place to prevent the spread of the virus in workplaces. By now, the state of emergency, threat or lockdown has ended in many countries. By contrast, it was extended in countries such as **Croatia, Portugal, and Romania**. Several countries (e.g. **Cyprus, the Czech Republic, Denmark and Norway**) are reporting a process of gradual re-opening of societal and economic life. Restrictions have generally been tightened in **Belgium**. In **Austria**, the Constitutional Court has ruled on the constitutionality of COVID-19-related measures and overruled certain aspects of one measure.

Restrictions on free movement have been eased in the **Czech Republic, Cyprus and Norway**. They have expired for EU citizens but remain in place for TCNs in **Spain**; changes in existing rules on restrictions to free movement are reported for **Slovenia**.

Measures to prepare for a second wave of COVID-19 have been passed in **Slovenia**.

Measures to facilitate (employer-imposed) work from home have been amended in **Poland**, and its use is strongly recommended in **Belgium**.

New health and safety standards for workplaces have been enacted in **Austria, Germany** (proposal for the meat industry), **Italy, Luxembourg** (transportation of workers to work/construction sites), the **Netherlands, Slovenia** and **Spain**, and the application of previously introduced measures has been temporarily extended e.g. in **Luxembourg**.

#### Measures to alleviate the financial consequences for businesses and workers

State-supported short-time work, temporary lay-offs or equivalent schemes remain in place in many countries. Previously enacted temporary schemes have been extended in **France, Slovakia** and the **UK**, and amended in **Italy**. Programmes providing financial benefits for workers and/or self-employed persons have been introduced in **Romania** and **Slovenia**, and amended in the **Czech Republic, France** and the **UK**.

Subsidies for employers have been temporarily extended in **Bulgaria**. Tax and contribution exemptions for employers providing a bonus to employees ("Prime Macron") have been enacted in **France**. Wage subsidies for employing vulnerable jobseekers have been expanded in **Luxembourg**. In **Portugal**, incentives for 'normalisation of business activity' and the 'progressive resumption of business activity' have been introduced.

#### Leave entitlements and social security

Special rules on entitlements to family- and care-related leave and sick leave continue to apply in many countries. In July, leave entitlements and benefits for persons in quarantine were introduced in **Slovenia**. An entitlement of vulnerable groups to 'smart working' has been introduced in **Italy**. Measures to increase the breadth of unemployment benefit schemes have been introduced in **Luxembourg** and **Slovakia**.



Table 1: Main developments related to measures to address the COVID-19 crisis

Topic	Countries
<b>Restriction of business activity by lockdown measures</b>	AT BE CZ DK HR NO PT RO SI
<b>Health and safety measures</b>	AT DE ES LU NL SI
<b>Benefits for workers / self-employed prevented from working</b>	CZ FR RO SI
<b>Free movement</b>	CZ ES NO SI
<b>Employer subsidies</b>	FR LU PT
<b>Social security</b>	LU SI
<b>Telework / work from home</b>	BE PL



### Other developments

The following developments in July 2020 were particularly relevant from an EU law perspective:

#### Free movement and posting of workers

In **Liechtenstein**, steps to adapt national law to Regulation (EU) 2016/589 on redesigning the European Employment Services network (EURES) have been taken.

In **Hungary, Poland and Sweden**, legislation transposing Directive 2018/957/EU has been passed. Previously enacted transposition legislation for this Directive entered into force in **Estonia, France, Germany, Lithuania, Malta** and the **Netherlands**. In **Finland**, a legislative proposal for the Directive's transposition was still being debated in Parliament.

### Working time and annual leave

In **Austria**, the Supreme Court ruled on the remuneration of standby work but avoided answering the question whether the periods at issue constituted working time under Directive 2003/88/EC. In another case, the Supreme Court qualified time needed to change into service clothes as working time. In **Germany**, a parliamentary group has called on the Federal Government to finally implement the CJEU's judgment of 14 May 2019 in case C-55/18 (*CCOO*). The Federal Labour Court has submitted a request for a preliminary ruling to the CJEU regarding paid annual leave under Article 7 of Directive 2003/88/EC.

#### Other

In **France**, the Labour Division of the Court of Cassation granted a fixed-term employee's claim to have her employment relationship reclassified as a permanent contract. In **Slovenia**, Parliament has adopted legislation to ratify amendments to the ILO's Maritime Labour Convention (MLC, 2006).

Table 2: Other main developments

Topic	Countries
Posting of workers	DE EE FI FR HU LT MT NL PL SE
Dismissal	EL ES FR HR IT
Discrimination	CZ HR RO
Working time	AT DE
Employee status	AT UK
Wages	CY DE
Night work	BG
Annual leave	DE
European Social Charter	DE
Right to exercise public office	ES
Collective action	FI
Maritime labour	FI
Convalescence leave	FR
Fixed-term work	FR
Freedom of religion	FR
Trade union representatives	FR
Work-related injury	HR
EURES	LI
Child labour	NL
Mobility incentives	PT
Temporary agency work	UK



## Implications of CJEU Rulings

### Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The CJEU's findings in this case concern the accrual of annual leave rights during the period between an unlawful dismissal and the employee's reinstatement. In this regard, the **majority of national reports** indicate that national law provides — either explicitly or as interpreted by the courts — for such an accrual of annual leave entitlements and can thus be considered in line with the CJEU's ruling. It is, however, noted for **Liechtenstein** and **Luxembourg** that reinstatement is rare in practice.

By contrast, national law does not provide for the accrual of annual leave rights in **Cyprus**, the **Czech Republic**,

**Hungary**, **Poland** or **Slovakia**, and national-level case law which has hitherto denied such an entitlement is reported for **France**, **Italy** and **Slovenia**. For these countries, the CJEU's decision requires an amendment to national law or its interpretation.

For **Denmark**, **Estonia**, **Iceland**, **Ireland** and the **UK**, it is pointed out that judicial annulment of a dismissal is an extremely rare remedy, so that it is difficult to state whether annual leave would be considered have accrued in the meantime. Yet, the **Icelandic** report stresses that financial compensation, expressed by reference to monthly salary payments (the usual remedy for unjust dismissal) includes an allowance for holiday pay entitlement per month. In **Belgium**, reinstatement is generally not possible under national law.

In **Finland** and **Malta**, the question has thus far not arisen in practice, and pertinent legislation is not conclusive on the issue.

# Austria

## Summary

(I) The Austrian government has further tightened the obligation to wear face masks in specific environments.

(II) Following recent rulings by the Constitutional Court, specific pieces of legislation to address the pandemic were deemed unconstitutional.

(III) Three Supreme Court decisions are of interest from an EU labour law perspective. One deals with the notion of worker (in concreto an attorney at law) and the other with various issues on working time (on-call time, time to change into service clothing).

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Given the recent rise in Covid-19 infections, the Austrian government has [tightened](#) the obligation for individuals to wear face masks in specific environments: wearing face masks is (again) mandatory in supermarkets, post offices, banks, pharmacies, nursing homes and hospitals. Employees in these establishments are required to wear face masks when in contact with customers if there is no other protective device offering the same level of protection.

### 1.2 Other Legislative Developments

Nothing to report.

## 2 Court Rulings

### 2.1 Worker status of an attorney at law

*Supreme Court, case 8 ObA 18/20k, 27 May 2020*

The plaintiff, a member of the bar association who has his own law firm, also worked for the defendant on the basis of so-called 'substitution agreements'. He claimed that the latter activity was performed in subordination and was to be classified as an employment relationship. Thus, he was entitled to additional remuneration including compensation for unused annual leave. The defendant, on the other hand, claimed that it was a free service relationship and was not covered by employment law.

The labour and social court of first instance dismissed the claim while the Court of Appeal granted it. The Supreme Court [upheld](#) this ruling. It pointed out that an employment relationship is a legal relationship requiring the individual to perform work for another person in personal dependence (subordination). The main characteristics of personal dependence are the fact that the individual required to perform work is bound by instructions given by the employer in particular with regard to place of work, working hours and work-related behaviour. Other criteria are the duty to perform work in person and the worker's organisational integration into the employer's business, including subjecting him/her to the employer's supervision. In the context of the present case, it was considered decisive that the plaintiff had to work fixed hours (six hours every day from Monday to Thursday) in the defendant's office. He had to complete files assigned to him using several 100 text modules prepared by the defendant for clients with whom he had no power of attorney relationship. The work delivered by the plaintiff was then

stored on the defendant's office server and not included in the plaintiff's own collection of samples. The plaintiff was also subject to checks on his work by the defendant and to personal instructions concerning his presence at the defendant's office. Additionally, he received a fixed monthly salary, independent of the number and quality of the work carried out, as well as reimbursement of his travel expenses. The fact that the plaintiff also had his own law firm did not conflict with this assessment either, because an employee can also, in principle, pursue other employment opportunities.

The definition used in this case by the Austrian Supreme Court also considers subordination (personal dependence according to the Austrian legal terminology) to be a decisive factor in the assessment of an employment relationship.

## 2.2 Qualification of on-call services as working time

*Supreme Court, case 8 ObA 4/20a, 24 April 2020*

The Austrian Working Time Act (*Arbeitszeitgesetz – AZG*) refers to standby services (*Arbeitsbereitschaft*) and on-call services (*Rufbereitschaft*) but does not define them. The first are considered to be working time (with an extension of maximum standard working hours) while the latter are rest periods (and certain restrictions apply concerning their frequency). The special legislation for persons employed by the Republic of Austria, the federal states as well as the municipalities include similar provisions.

In the present case, the plaintiff worked on call for a municipality's association at a wastewater plant and claimed that this time was to be considered working time and compensated accordingly. He referred to the decision of the CJEU in *Matzak*. The employee had to reach his workplace within 30 minutes in the event of an incident requiring immediate intervention. In addition, he had to ensure that his blood alcohol content did not exceed 0.5 permille. Between March 2014 and June 2018, a total of 12 incidents occurred requiring the plaintiff's intervention (i.e. on 1 – 2 per cent of the days he was on-call duty, he was actually called on to work). Under these circumstances, the Supreme Court upheld the ruling of the Court of Appeal, qualifying the on-call times as not being working time under Austrian law.

Concerning conformity with EU law, the Supreme Court only briefly stated:

*"The question raised by the plaintiff regarding conformity of [the relevant Austrian legislation] with Union law need not be discussed here. The plaintiff is not able to demonstrate to what extent the remuneration sought by him would result from this."*

The Supreme Court avoided answering the question whether the on-call service was to be qualified as working time in accordance with the Working Time Directive 2003/88/EC, [arguing](#) that the present case only dealt with remuneration, an aspect of working time that is not regulated by EU law.

## 2.3 Qualification of time to put on service clothes as working time

*Supreme Court, case 9 ObA 13/20g, 22 May 2020*

The defendant was a thermal spa, and the plaintiff was the works council established there. The works council claimed that the time specific employees spent on changing into their service clothes was to be considered working time. The employees in the defendant's kitchen and service area are required according to their employment contract to wear a short T-shirt with an imprint (shark and logo: A\*\*\*\*\* - The Pirate



World), black capri pants, an apron and headgear with a pirate print. This outfit (a 'pirate costume' as the court explicitly referred to it) was provided by the defendant but washed by the employees themselves. In principle, the defendant allowed employees to put on their work clothes at home and to come to the workplace in those clothes. Some employees did so regularly, while others changed their clothes on the premises.

The Supreme Court [used](#) this opportunity to refine its case law (decision of 17.5.2018, [9 ObA 29/18g](#) – Flash Report 6/2018), which covered doctors in a hospital who had to change at the premises for hygienic reasons. The time spent changing and taking the clothes to the laundry was considered working time, as changing into hospital clothes on the premises was deemed direct fulfilment of the employment contract.

The present case differs from the mentioned one, as the employer allowed the employees to change into the pirate costume at home (as a rule). The court pointed out, however, that it is objectively unreasonable to expect an employee to change into such a uniform at home and travel to his/her workplace and return home wearing his/her uniform after the end of his/her work shift. The unreasonableness to change at home in individual cases can result from the fact that the uniforms, for example, brandish the specific company by means of emblems, logos or other colours or are otherwise (particularly) conspicuous or unusual. The uniforms ('pirate costume') prescribed by the defendant for employees working in the service and kitchen area of the thermal spa make it objectively unreasonable for them to wear the uniforms on their way to work. On the one hand, the logo "A\*\*\*\*\* - The Pirate World" which appears on the T-shirt indicates a direct connection to the defendant's company, and on the other hand, wearing this T-shirt and the black capri pants (even without the apron and the headgear with the pirate print) is (particularly) conspicuous clothing. The objectively necessary changing of clothes at the defendant's company is thus no longer determined by the employees who can decide for themselves where to put on their uniform, but—to an intensity exceeding the minimum—by the defendant. The time spent changing into and out of such a uniform is therefore to be qualified as working time according to the Austrian Working Time Act (*Arbeitszeitgesetz*). An obligatory (contractual) order by the employer to the employee to wear these uniforms during their leisure time would constitute an impermissible intrusion into the employee's private sphere (see Supreme Court of 24.9.2015, [9 ObA 82/15x](#) concerning the employer's order not to wear a pink but a black hairband at work).

In the present case, the time spent moving within the company between the respective changing room in the company (e.g. changing room, cloakroom) and the actual workplace must also be regarded as working time within the meaning of the Working Time Act.

### 3 Implications of Rulings of the CJEU and the ECHR

#### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

In joined cases C-762/18 and C-37/19, the CJEU reviewed national case law, which provides that a worker who has been unlawfully dismissed and who then resumed employment under national law following the annulment of his/her dismissal by a court decision, is not entitled to paid annual leave for the period from the date of his/her dismissal to the date of resumption of his/her employment relationship on the ground that he/she did not actually perform any work for the employer during that period is incompatible with Art 7 (1) of the Working Time Directive 2003/88/EC. It is also not compatible with Art 7 (2) of this Directive if national case law provides that, where the employment relationship is terminated after the worker concerned was unlawfully

dismissed and later resumed his/her employment relationship in accordance with national law following the annulment of his/her dismissal by a court decision, he/she is not entitled to financial compensation for paid annual leave not taken during the period from the date of his/her unlawful dismissal until the date of resumption of his/her employment relationship.

Under Austrian law, it is also possible to contest a dismissal in court under certain circumstances (§ 105 Labour Constitution Act – *Arbeitsverfassungsgesetz* – ArbVG) and if this procedure is successful, the dismissal is nullified retroactively, i.e. the worker must be treated as though he/she had never been dismissed. This usually results in the employer having to pay the employee's wages during the court procedure and granting annual leave that accumulated during that time. It has never been contested that the worker is also entitled to paid annual leave for the period between the date of his/her dismissal and the date of resumption of the employment relationship due to a successful contestation of the dismissal or that—if the employment relationship is terminated afterwards—he/she is also compensated for this portion of annual leave. In the published Supreme Court decisions, this is never argued but it is taken for granted that such annual leave accrues during the court proceedings or that it is to be compensated financially afterwards. For example, in the Supreme Court decision of 28.10.2013, [8 Ob A 11/13w](#), neither the parties nor the Court questioned compensation for unused leave accumulated during this period, but the employer argued that it was time barred, as the claim had not been submitted in due time. In a more recent decision of the Supreme Court of 28.8.2018, [8 ObA 47/18x](#), the Court explicitly stated that annual leave entitlement for the period of the court proceedings only arises retroactively on the date the judgment is issued. It went on to state that only from this date onwards would the worker objectively have been able to claim annual leave entitlement; it therefore cannot be time-barred (not even partially) due to the lack of the possibility of claiming it during the court proceedings.

Austrian case law is in line with the decision of the CJEU in joined cases C-762/18 and C-37/19.

## 4 Other Relevant Information

### 4.1 Complaints against COVID-19 legislation

The Austrian Constitutional Court has dealt with numerous complaints about the Austrian COVID-19 legislation. It has largely declared the legislation to be (or to have been) constitutional. Specifically, the right to compensation for loss in income based on the Austrian Act on Epidemics (see e.g. FR 2020/6) and the lack of such compensation rights under the Austrian Act against COVID-19 have been declared constitutional.

The general ban on entering public places, which no longer is in force, has been declared to have been unconstitutional, and the government is now working on a revision of the legislation in case the COVID-19 pandemic requires the implementation of tighter restrictions in the near future.

A press statement on the rulings by the Constitutional Court including a link to the full text rulings is available [here](#).

Implications of the Constitutional Court's ruling according to the press is available [here](#).

A press revision of the legislation after the Constitutional Court's rulings is available [here](#).

# Belgium

## Summary

(I) "The concept 'employer' in the Regulation No. 883/2004 on the coordination of social security systems must be interpreted as meaning that the employer of an international long-distance lorry driver, for the purposes of those provisions, is the undertaking which has actual authority over that long-distance lorry driver, which bears, in reality, the costs of paying his or her wages, and which has the actual power to dismiss him or her, and not the undertaking with which that long-distance lorry driver has concluded an employment contract and which is formally named in that contract as being the employer of that driver".

(II) Telework is again strongly recommended during the pandemic.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

On 27 July 2020, the Federal Government announced a number of additional measures to fight the resurgence of the coronavirus. Teleworking is again strongly recommended, where possible, to avoid frequent contact between workers.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The ECJ ruling concerns a Bulgarian and an Italian case regarding a dismissed employee who subsequently resumed his employment contract in accordance with national law following the judicial annulment of his dismissal. During the suspension period between the unlawful dismissal and his reinstatement, the employee did not perform any work. The ECJ held that the impossibility of the employee to work because of the unlawful dismissal was beyond the employee's control. Without the dismissal by the employer, the employee would have been working during the suspension period and make use of his right to paid annual leave. Consequently, an employee who has been unlawfully dismissed and subsequently resumes his work following an annulment of his/her dismissal can claim his/her right to paid annual leave.

According to Belgian employment law, in the event of an unlawful dismissal, the judicial annulment of this dismissal is not possible. Only a pecuniary dismissal compensation can be imposed on the employer.

### 3.2 Employer status

*CJEU case C-610/18, 16 July 2020, AFMB and Others*

“In the main proceedings, AFMB Ltd, a company established in Cyprus, had concluded with transport undertakings established in the Netherlands agreements whereby it undertook, in consideration of a commission, to take charge of the management of the heavy goods vehicles operated by those undertakings, on behalf of and at the risk of those undertakings. AFMB had also concluded employment contracts with international long-distance lorry drivers residing in the Netherlands, in which AFMB was named as their employer. The long-distance lorry drivers concerned were employed, on behalf of the transport undertakings, in two or more Member States, and also in one or more States of the European Free Trade Association (EFTA)” (ECJ Press release 93/20).

“AFMB and the drivers challenged decisions of the Raad van bestuur van de Sociale VerzekeringsBank (Board of Management of the Social Insurance Bank, Netherlands) whereby the Netherlands social security legislation was stated to be applicable to those drivers. In the view of the SVB, only the transport undertakings established in the Netherlands ought to be regarded as the employers of those drivers, and consequently the Netherlands legislation was applicable, while AFMB and the drivers considered that AFMB ought to be regarded as the employer and that, since its registered office is in Cyprus, Cypriot legislation was applicable” (ECJ Press release 93/20).

“In this ruling, the Grand Chamber of the ECJ held that the employer of an international long-distance lorry driver, for the purposes of Regulation No 883/2004 on the Coordination of social security schemes is the undertaking that has actual authority over that driver, that bears, in reality, the cost of his or her wages and that has actual power to dismiss him or her, and not the undertaking with which that long-distance lorry driver has entered into an employment contract and which is formally named in that contract as being his or her employer” (ECJ Press release 93/20).

“Against that background, the referring court, emphasizing the crucial importance of that issue for the purposes of determining the national social security legislation applicable, has sought from the Court clarification concerning who, either the transport undertakings or AFMB, should be considered to be the ‘employer’ of the drivers concerned. Under Regulation No 883/2004, persons, such as the drivers at issue, who are employed in two or more Member States but do not work principally in the territory of the Member State where they reside, are subject, for social security purposes, to the legislation of the Member State in which the employer has its registered office or place of business.

The Court first observed that the Regulation No 883/2004 does not, for the purposes of determining the meaning of the concepts of ‘employer’ and ‘personnel’, make any reference to national legislation or practice. Consequently, those concepts must be given an autonomous and uniform interpretation, which takes into account not only the wording of the relevant provisions but also their context and the objective pursued by the legislation in question.

As regards the terms used and the context, the Court stated that the relationship between an ‘employer’ and the ‘personnel’ employed implies the existence of a hierarchical relationship. Further, the Court stated that account must be taken of the objective situation of the employed person concerned and all the circumstances of his or her work. In that regard, while the conclusion of an employment contract may indicate the existence of a hierarchical relationship, that circumstance alone cannot permit a definitive conclusion that there exists such a relationship. It remains necessary to have regard not only to the information formally contained in the employment contract but also to how the obligations under the contract incumbent on both the worker and the undertaking in question are performed in practice. Accordingly, whatever



the wording of the contractual documents, it is necessary to identify the entity which actually exercises authority over the worker, which bears, in reality, the relevant wage costs, and which has the actual power to dismiss that worker.

In the view of the Court, if an interpretation were to be based solely on formal considerations, such as the conclusion of an employment contract, that would amount to allowing employers to transfer the place which is to be regarded as relevant to the determination of which national social security legislation is applicable, when such a transfer does not, in reality, contribute to the objective, pursued by Regulation No 883/2004, of guaranteeing that workers can genuinely exercise their right to freedom of movement. While noting that the aim of the system introduced by those regulations is, indeed, solely to promote the coordination of national social security legislations, the Court considers, nonetheless, that the objective pursued by those regulations would be likely to be undermined if the interpretation adopted were to make it easier for employers to make use of purely artificial arrangements in order to exploit the EU legislation with the sole aim of obtaining an advantage from the differences that exist between the national rules. In this instance, the Court held that the drivers appear to have been members of the personnel of the transport undertakings and to have had those undertakings as their employers, with the consequence that the Netherlands social security legislation seems to be applicable to them, although that is a matter to be determined by the referring court. Those drivers, before the conclusion of the employment contracts with AFMB, had been chosen by the transport undertakings themselves and were employed, after the conclusion of those contracts, on behalf of and at the risk of those undertakings. Further, the actual cost of their wages was borne, via the commission paid to AFMB, by the transport undertakings. Last, the transport undertakings seemed to have the actual power of dismissal and a number of the drivers had, prior to the conclusion of the employment contracts with AFMB, previously been employed by those undertakings" (ECJ Press release 93/20).

#### 4 Other Relevant Information

Nothing to report.

# Bulgaria

## Summary

- (I) Measures relating to the COVID-19 crisis have been extended.
- (II) A decree amends the wage supplement for night work.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

The Council of Ministers adopted Decree No. 151 on 03 July 2020 on the Determination of the Conditions and Procedure for Payment to Retain the Employment of Employees after the Period of the Extraordinary Situation announced by a decision of the National Assembly of 13 March 2020 and the Extraordinary Epidemic Situation announced by Decision No. 325 and extended by Decision No. 378 of the Council of Ministers of 2020 (promulgated in the State Gazette No. 60 of 07 July 20). Employers have the right to receive financial assistance from the “Unemployment” fund of the Social Insurance Institute to retain employment after the extraordinary situation related to the COVID-19 pandemic eases. These means shall be available until 30 September 2020. It amounts to 60 per cent of the contributory income and 40 per cent of the social insurance contributions. They are for employers whose operations have been halted, or have introduced part-time work or unpaid leave, etc., and shall be paid following a positive decision by the European Commission regarding such payments in compliance with the internal market according to Article 107, para. 3, issue “b” of the Agreement on the Functioning of the EU.

### 1.2 Other legislative developments

#### 1.2.1 Night work

The Council of Ministers adopted Decree No. 156 on 21 July 2020 regarding the amendment of the Ordinance for the Structure and Organisation of Wages (State Gazette No. 66 of 24 July 2020). Pursuant to this amendment, the sum of additional remuneration for night work was increased from BGN 0.25 (EUR 0.01) to 0.15 per cent of the minimum wage, but not less than BGN 1 (EUR 0.25).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU, case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The joined cases concerned a case from Bulgaria. Bulgarian legislation is in full conformity with the rulings. The situation concerned court rulings that have often been criticised in academic publications. Paid annual leave in Bulgaria does not depend on the duration of effective provision of work, but on the duration of the employment service (Article 155, para 2 of the Labour Code). Pursuant to Article 351, para 1 LC “within the meaning given by this Code, the length of the employment service shall be the time during which an employee has worked under an employment relationship,





unless otherwise provided for in this Code or in another law, as well as the time during which the person has worked as a civil servant.” The Labour Code regulates situations in which the length of the employment service includes the time the employee did not perform work:

(i) time under the employment relationship which is assimilated to the length of the employment service without the employee having actually worked – e.g. paid leave used, regardless of the grounds and mode of payment; unpaid leaves used, as established by the Labour Code or by other statutory instruments, where this is expressly provided for, etc. (Article 352);

(ii) the period until an employment relationship is terminated, provided that the worker or employee acted in good faith when said relationship was established (Article 353);

(iii) time assimilated to the length of the employment service without the existence of an employment relationship – e.g. the employee was unemployed by reason of a dismissal which was pronounced wrongful by the competent authorities: from the date of dismissal until the date of reinstatement of the said worker; the person has served a custodial sentence, which was subsequently pronounced according to the relevant procedure as having been groundlessly imposed, etc. (Article 354).

Bulgarian legislation thus includes broader rights than Directive 2003/88/EC. The courts must properly enforce the law.

#### **4 Other Relevant Information**

Nothing to report.

# Croatia

## Summary

(I) A number of measures have been introduced to address the COVID-19 crisis. Some of them relate to restrictions of wedding ceremonies, some relate to gatherings of more than 100 persons, others relate to mandatory use of face masks or medical masks, etc.

(II) The case law of the Croatian courts is in line with the ruling in joined cases C-762/18 and C-37/19. The Constitutional Court of the Republic of Croatia dealt with a case on the existence of an employment relationship as well as a case on the appointment of judges.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Extension of the duration of special circumstances

The Government of the Republic of Croatia has extended the duration of the special circumstances (Official Gazette No. 83/2020) prescribed by Article 25a of the Enforcement of Cash Act (Official Gazette 68/18, 2/20, 46/20 and 47/20) until 18 October 2020. The same applies to the special circumstances prescribed by Article 8(1) of the Act on Intervention Measures in Enforcement and Bankruptcy Proceedings. The source can be found [here](#).

#### 1.1.2 Temporary prohibition of border crossings

The Civil Protection Headquarters of the Republic of Croatia issued an [Amendment](#) to the Decision on the Temporary Prohibition of Border Crossing of the Republic of Croatia (Official Gazette No. 81/2020). It applies until 31 July 2020.

The prohibition does not apply to nationals of Member States of the European Union or Schengen Member States and states that have signed agreements in association with the Schengen Area as well as members of their families, and third-country nationals who are long-term residents in line with Council Directive 2003/109/EC. There are some exceptions to the prohibition for third-country nationals to cross the borders of Croatia. For instance, health care workers or cross-border workers, etc. are entitled to cross the borders of Croatia.

#### 1.1.3 Restrictions of wedding ceremonies

Based on the proposal of the Civil Protection Headquarters of Vukovar-Srijem County of 19 July 2020, the necessary epidemiological measure has been introduced to limit wedding ceremonies (which can now only include the immediate family). This Decision shall apply until 4 August 2020.

#### 1.1.4 Mandatory use of face masks

Face masks or medical masks are required for:

- employees of health care institutions and persons who come to visit patients, if visits are allowed;



- drivers, other employees in public transport and passengers in public transport;
- employees in trade and customers during their visits to stores;
- employees in the catering industry who come into contact with guests or serve and prepare food, drinks and beverages;
- employees of companies and institutions that work with clients and clients who come to those companies and institutions;
- employees in service industries who come into close contact with clients;
- and other persons who are required to do so by special instruction and recommendations of the Croatian Institute of Public Health.

Sources can be found [here](#) and [here](#).

### 1.1.5 Measures on large gatherings

Organisers of events, who expect attendance of more than 100 participants, are required to submit a notification to the competent civil protection service of the Civil Protection Directorate by e-mail no later than 48 hours before the planned start of the event. They must present lists of participants and must comply with the general COVID measures and the special recommendations and instructions of the Croatian Institute of Public Health. The source is available [here](#).

### 1.1.6 Coordination of activities – Economic governance of EU

The Government of the Republic of Croatia has issued an Amendment to the Decision on the Coordination of Activities within the Framework for Economic Governance of the EU (Official Gazette No 89/2020). Measures to eliminate structural obstacles and to mitigate the economic and social impact of COVID-19 have been added to the list of objectives. The source can be found [here](#).

### 1.1.7 Write-off of receivables in accounts for residences and business premises

Receivables for leases, i.e. use of business premises for the months of April and May 2020 will be written off to tenants, i.e. users of business premises who could not work in accordance with the decisions of the Civil Protection Headquarters of the Republic of Croatia. The source can be found [here](#).

## 1.2 Other Legislative Developments

### 1.2.1 Recognition of foreign professionals

The Minister of Demography, Family, Youth and Social Policy issued two ordinances. The professional qualifications and experience of foreign candidates are compared with those required to perform the professions social educator and psychologist. The ordinances contain a list of attestations and documentation that must be attached to the application. The sources can be found [here](#) and [here](#).

## 2 Court Rulings

### 2.1 Employment relationship

*Constitutional Court of the Republic of Croatia, case U-III-951/2017, 24 June 2020*

In the present case, there was no evidence of a termination of the employment contract, nor was there any evidence of paid salaries. In this context, the issue raised was whether it can be concluded that an employment relationship had existed, and consequently, that the employer had the obligation to pay social security contributions for the period from the last paid salary to the time the employer ceased its operations, i.e. up to the time the employer was deleted from the court register. Meanwhile, the same applicant brought cases before the courts because the employer had failed to pay salaries. Some of the judgments in the mentioned cases were not final, i.e. the court proceedings had been suspended because the employer was deleted from the court register. Since salaries, taxes and social security contributions had not been paid by the employer, the High Administrative Court insisted that the only relevant evidence for the existence of an employment relationship was the final judgment of the regular court, which had confirmed the existence of such a relationship. The Constitutional Court of the Republic of Croatia found this approach to be too formalistic and that the burden of proof for the claimant to prove the existence of an employment relationship was too heavy. Consequently, it determined that Article 19(2) of the Constitution of the Republic of Croatia had been breached, i.e. the right to judicial review of the legality of individual acts of administrative authorities had been breached. The source can be found [here](#).

### 2.2 Monetary damages for applicants

*Constitutional Court of the Republic of Croatia, case U-III-3053/2018, 24 June 2020*

In the present case, the Constitutional Court of the Republic of Croatia determined that the right to availability under equal conditions of every job and duty guaranteed by Article 54(2) of the Constitution had been violated. Each of three applicants was awarded damages in the amount of HRK 40 000 (approx. EUR 5 333). In the process of appointing judges, candidates are evaluated based on an assessment of their performance of judicial duties and through an interview. There is a list of judges-applicants for vacant positions based on the points they accumulated, considering the quality of their work as a judge, their participation in further education, publication of academic papers, etc. In the present case, four judges lodged constitutional complaints with the Constitutional Court against the State Judicial Council. They claimed that although they had achieved better scores for the vacant positions as judges at the Court of Appeal in Zagreb, judges who had reached lower scores were appointed.

In this Decision, the Constitutional Court of the Republic of Croatia dealt with the principle of equality or equal treatment of all persons in exercising their right to employment in appropriate jobs and duties. 'The focus of the guarantee in Article 54(2) of the Constitution is on the principle of equality of opportunity, i.e. equal treatment, which is guaranteed by objective and known criteria, i.e. on equal conditions in the first place, and should be considered together with the provisions of the Constitution, which guarantee equality of all before the law and prohibit discrimination on any grounds (Article 14 of the Constitution).' The Constitutional Court emphasised that the State Judicial Council was established in the Croatian legal system by the Constitution as an independent body whose task is to ensure the independence and autonomy of the judiciary, which includes independent decision-making on the appointment, promotion, transfer, dismissal and disciplinary responsibility of judges. However, the decisions of the State Judicial Council must not be substantially unjust, unreasonable, irrational or arbitrary, i.e. inconsistent with the rule of law.

The Constitutional Court found that the reasoning of the State Judicial Council's disputed decision does not state and sufficiently explain any legally relevant reasons from which it would be clear which professional qualities of the candidates (for instance, one of them was ranked as 67th on the list) make them more eligible than others for the appointment as a judge of the County Court in Zagreb, especially from those candidates who are ahead of them on the list (ranked higher on the list than the appointed judges). The problem is that the State Judicial Council insisted on the position that it is not required to state and sufficiently explain any legally relevant reasons regarding the professional qualities based on which it gave preference to the candidates ranking lower on the priority list over other candidates who ranked higher on that same list. Bearing in mind the State Judicial Council's above-mentioned position and the impossibility of establishing the situation as it was prior to the adoption of the disputed decision, the Constitutional Court concluded that revoking the State Judicial Council's disputed decision and returning the case for a new decision before that body would not lead to an elimination of the violation of rights, and therefore, the Constitutional Court determined a fair monetary compensation for the applicants. The source can be found [here](#).

### 3 Implications of CJEU Rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

[These joined cases](#) C-762/18 and C-37/19 relate to national laws that do not provide a right to paid annual leave to unfairly dismissed employees (i.e. no entitlement to cash benefits for unused annual leave) for the period from the date of dismissal to the date of resumption of work.

The CJEU ruled that such national case law is not in line with Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain forms of organisation of working time. Unfairly dismissed employees must be entitled to monetary compensation for unused paid annual leave for the period from the date of the unfair dismissal until his/her return to work. The case law of the Croatian courts is in line with the ruling in joined cases C-762/18 and C-37/19 (see, for instance, the judgment of the Supreme Court Revr 463/2001-2, 22 October 2002). Namely, in case of unfair dismissal, the employee is entitled to his/her salaries and compensation for the annual leave the employee could not take due to the unfair termination of the employment contract.

#### 3.2 Work-related injuries

*ECHR, case App. No 67705/14, 9 July 2020, Idžanović v. Croatia*

The applicant [in this case](#) claimed that he was injured and that his injury was work-related. The Croatian courts ruled that the applicant did not have a work-related injury because he had not been authorised to be where he had been at the time of the accident. He wanted to explain why he was present at the time and provided an explanation for his presence there, but his arguments were not accepted by the courts. More importantly, no oral hearing took place before the High Administrative Court or any other authority. The ECHR disagreed with the ruling of Croatian courts that:

*“the central issue in the proceedings in question was neither legal nor highly technical, but rather a purely factual issue which was disputed between the parties, namely whether at the time of the accident one of the applicant's work-related tasks was to climb the machinery from which he had fallen [...] Therefore, although under domestic law the High Administrative Court was not required to*



*hold an oral hearing [...] according to the well-established case-law of the Court, the applicant was in principle entitled to one.”*

Only exceptional circumstances could have justified dispensing with a hearing, but since such exceptional circumstances had not occurred, the ECHR concluded that dispensing with a hearing was not justified in the proceedings. Therefore, the ECHR ruled that Article 6(1) of the Convention had been violated.

## 4 Other Relevant Information

### 4.1 New Minister of Labour appointed

The new 'old' Minister of Labour, Pension System, Family and Social Police has been appointed. Minister Josip Aladrović was Minister of Labour and Pension System in a previous government mandate. Since some ministries have been joined, Minister Aladrović is responsible not only for areas of labour and the pension system, but for areas of the family and social system as well. A newspaper article can be found [here](#).

# Cyprus

## Summary

- (I) The restrictive emergency measures to contain the COVID19 pandemic have been eased.
- (II) A ruling of the Administrative Court deals with the deduction of salaries and benefits of judges.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

In July, the restrictions of the lockdown, which affected labour relationships because of the outbreak of the coronavirus pandemic, were further eased.

Travel restrictions were also eased, but hinge on how a country is ranked in relation to its success in containing coronavirus infections.

The third phase of measures began on 9 June and ended on 13 July. The fourth phase began on 14 July.

By the end of July, there was a new spike in coronavirus infections. Some commentators are speaking of an early second wave.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

An important decision of the Administrative Court has been issued. In joined cases, Ap. 256/2016, 522/2016, 523/2016, 524/2016, 525/2016, 526/2106, 527/2016, 528/2016, 529/2016, 530/2016, 531/2016, 532/2016, 533/2016, 598/2016, 603/2016, 610/2016, 31 July 2020, Seraphim and others, the Court ruled on the deduction of salaries and benefits of judges who had been appointed.

*Επικαλέστηκαν οι καθ' ων η αίτηση προς υποστήριξη της θέσης τους την απόφαση του Δικαστηρίου της Ευρωπαϊκής Ένωσης (ΔΕΕ) Associacao Sindical dos Juizes Portugueses v Tribunal de Contas C-64/16, ημερ. 27/2/2018, των Πορτογάλων Δικαστών, βάσει της οποίας εξηγούν το ΔΕΕ απάντησε στο σχετικό προδικαστικό ερώτημα, ότι οι αποκοπές στις απολαβές των δικαστών που έγιναν προς εξυπητέτηση των δημοσιονομικών αναγκών σε περιόδους οικονομικής κρίσης που αφορούν συνολικά το σύνολο των εργαζομένων, δεν παραβιάζουν την ανεξαρτησία των δικαστών, κατ' ομοιότητα εισηγούνται με τον επίδικο νόμο, που αποσκοπούσε να διασώσει το κυβερνητικό σχέδιο σύνταξης και ήταν νόμος γενικής εφαρμογής για όλο τον κρατικό τομέα.*

*Οι αιτητές απάντησαν πως η σχετική εισήγηση περί της σχετικότητας της απόφασης αυτής παραγνωρίζει ότι το ΔΕΕ κατέληξε σε αυτή την δικαστική κρίση αφού έλαβε υπόψη το γεγονός ότι οι αποκοπές περιορίζονταν σε ποσοστό 10% επί των μηνιαίων απολαβών και ότι θα διαρκούσαν για περιορισμένο χρόνο, που προβλεπόταν στον σχετικό νόμο.*

*Συμφωνώ με τους αιτητές, ότι γνωμοδότηση περί του ότι δεν επηρεάστηκε εκεί η ανεξαρτησία των Δικαστών, από τις αποκοπές στον μισθό τους, συναρτάτο με τους*

παράγοντες που περιγράφηκαν στην πιο πάνω απόφαση του ΔΕΕ επί του προδικαστικού ερωτήματος. Το Ευρωπαϊκό Δικαστήριο αναφέρθηκε στο κράτος δικαίου, στην ανεξαρτησία των δικαστών ως υποχρέωση των κρατών μελών της Ευρωπαϊκής Ένωσης, με αναφορά στο άρθρο 2 της Συνθήκης για την Ευρωπαϊκή Ένωση, καθώς και το άρθρο 19 της Συνθήκης. Το ΔΕΕ έκρινε ότι το άρθρο 19 παρ. 1 της Συνθήκης περί της υποχρέωσης των κρατών μελών να διασφαλίσουν την ανεξαρτησία της δικαστικής εξουσίας συγκεκριμενοποιεί την αξία του κράτους δικαίου του άρθρου 2 της Συνθήκης.

Στις επίδικες σήμερα υποθέσεις, το ζήτημα δεν είναι η αποκοπή ποσοστού από τις απολαβές των δικαστών, ζήτημα που εξέτασε η Πλήρης Ολομέλεια του Ανωτάτου Δικαστηρίου στις συνεκδικασμένες υποθέσεις Αλέξανδρος Φυλακτού και Άλλοι ν. Δημοκρατίας (2013) 3 ΑΑΔ, 565, με αναφορά στο άρθρο 158.3 του Συντάγματος και την απαγόρευση της δυσμενούς μεταβολής των όρων υπηρεσίας των δικαστών μετά τον διορισμό τους, αλλά την μη ένταξη μερίδας δικαστών σε οποιοδήποτε επαγγελματικό σχέδιο σύνταξης, δηλαδή στην εξαίρεσή τους από το δικαίωμα σε επαγγελματική σύνταξη, το οποίο προβλέπεται από τον περί Δικαστηρίων Νόμο, κατ' εντολή του συντακτικού νομοθέτη για όλους τους δικαστές για τους λόγους που αναλύθηκαν ανωτέρω. Στην πρόσφατη απόφαση του ΔΕΕ κατά της Πολωνίας (Επιτροπή κατά Πολωνία C-619/18, ημερομηνίας 24/6/2019), το ΔΕΕ για άλλη μία φορά αναφέρθηκε στις υποχρεώσεις των κρατών μελών της Ευρωπαϊκής Ένωσης, με αναφορά στο άρθρο 2 της Συνθήκης για την Ευρωπαϊκή Ένωση, το άρθρο 19 της Συνθήκης, σε συνδυασμό με το άρθρο 47 του Χάρτη Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, για να υποδείξει ότι παρά την διακριτική ευχέρεια των εθνικών κρατών να θεσπίζουν και να εφαρμόζουν νόμους για την λειτουργία των δικαστηρίων, τα κράτη μέλη υποχρεούνται να διασφαλίζουν με τις νομοθετικές ρυθμίσεις την ανεξαρτησία των εθνικών δικαστών, οι οποίοι εφαρμόζουν το δίκαιο της Ευρωπαϊκής Ένωσης. Τα ζητήματα που απασχόλησαν ήταν οι τροποποιήσεις της Πολωνικής νομοθεσίας με τις οποίες μειώθηκε το όριο ηλικίας των εν ενεργεία δικαστών, με δικαίωμα για αίτηση παράτασης της υπηρεσίας του δικαστή προς τον Πρόεδρο της Δημοκρατίας, κατά την διακριτική του ευχέρεια. Επρόκειτο για αλλαγές που όπως αποφασίστηκε έθιγαν την ανεξαρτησία της δικαστικής εξουσίας και το κράτος δικαίου, κατά παράβαση της ΣΕΕ.

Στην μία τάξη δικαστών εντάσσονται βάσει του Ν.216(I)/2012 οι έχοντες υπηρετήσει για ένα διάστημα (οποιοδήποτε διάστημα) στη δημόσια υπηρεσία και στην άλλη τάξη οι δικαστές που δεν έτυχαν στο παρελθόν να εργαστεί στο δημόσιο και εκ του λόγου τούτου ενταχθεί στο κυβερνητικό σχέδιο σύνταξης. Για τους πρώτους ήδη ο περί Δικαστηρίων Νόμος προβλέπει στο άρθρο 8.3(iii) πως κατά την συνταξιοδότησή τους από θέση δικαστή η τυχόν περίοδος εργασίας τους στο δημόσιο λαμβάνεται υπόψη για τον υπολογισμό της σύνταξής τους, ρυθμίζοντας κατά τον τρόπο αυτό τα κεκτημένα τυχόν δικαιώματά τους από την προηγούμενη υπηρεσία τους σε θέση στην κρατική υπηρεσία. Η περίοδος υπηρεσίας των δικαστών και εργασίας τους ως Δικαστές, δεν μπορεί να αμείβεται με διαφορετικούς όρους, περιλαμβανομένου και του δικαιώματος ένταξης σε επαγγελματικό σχέδιο συντάξεων και παραχώρηση σύνταξης και εφάπαξ και άλλων ωφελημάτων που ο περί Δικαστηρίων Νόμος προβλέπει κατά τον διορισμό τους. Στην απόφαση του ΔΕΕ Ο' Brien C-393/10, ημερομηνίας 1/3/2012, σε προδικαστικό ερώτημα που αφορούσε την Οδηγία 97/81, περί του πλαισίου εργασίας με μερική απασχόληση, ο κ. Ο' Brien εργαζόταν τότε ως part-time δικαστής στο Ηνωμένο Βασίλειο και στερήθηκε της σύνταξης γήρατος. Το ΔΕΕ αποφάσισε, πως η συμφωνία πλαίσιο για την εργασία μερικής απασχολήσεως [...] έχει την έννοια ότι δεν επιτρέπει να προβαίνει το εθνικό δίκαιο σε διακρίσεις όσον αφορά την πρόσβαση στο συνταξιοδοτικό σύστημα, μεταξύ των δικαστών πλήρους απασχολήσεως και των δικαστών μερικής απασχολήσεως που αμείβονται σε ημερήσια κατ' αποκοπήν βάση, εκτός αν η διαφορετική αυτή μεταχείριση



δικαιολογείται από αντικειμενικούς λόγους, πράγμα του οποίου η εκτίμηση απόκειται στο αιτούν δικαστήριο.

Στην πρόσφατη απόφαση του Εργατικού Δικαστηρίου του Ηνωμένου Βασιλείου που επικυρώθηκε από το Court of Appeal, απόφαση η οποία τελεσιδίκησε πρόσφατα όταν το Supreme Court απέρριψε το αίτημα για έφεση *McCloud & Others v. The Lord Chancellor and Secretary of the State for Justice, Case No .2201483/2015 & Others*, ημερομηνίας 22/11/2016, αποφασίστηκε πως η ένταξη των αιτητών νέων δικαστών σε λιγότερο προνομιακό κυβερνητικό σχέδιο σύνταξης κατά τις μεταβατικές διατάξεις, συνιστούσε άμεση άνιση διάκριση λόγω ηλικίας κατά παράβαση της Οδηγίας 2000/78/EK και της εθνικής νομοθεσίας. Σύμφωνα με την προαναφερθείσα Οδηγία της Ευρωπαϊκής Ένωσης, η οποία ενσωματώθηκε στην κυπριακή έννομη τάξη, απαγορεύονται διακρίσεις στην εργασία, περιλαμβανομένου και του επαγγελματικού σχεδίου σύνταξης ως ήταν το επίδικο στην υπόθεση εκεί που συνιστούν άμεση διάκριση μεταξύ των εργαζομένων βάσει ηλικίας, θρησκείας, γενετήσιου προσανατολισμού κλπ., (2000/78/EK του Συμβουλίου, 27/11/2000).

Στην παρούσα υπόθεση δεν υπήρξε νεότερο κυβερνητικό σχέδιο συντάξεων καν. Το σχέδιο συντάξεων έκλεισε, χωρίς μετάβαση σε νέο σχέδιο. Ο αποκλεισμός των αιτητών από το δικαίωμα σύνταξης δικαστή με κριτήριο την μη ένταξη τους στο επαγγελματικό σχέδιο σύνταξης λόγω μη διορισμού τους σε συντάξιμη θέση του δημοσίου πριν τον διορισμό τους στη θέση δικαστή, ως άλλοι δικαστές που τελούν σε όμοιες συνθήκες με αυτούς, αποτελεί δυσμενή διάκριση κατά παράβαση της αρχής της ισότητας. Αποτελεί δυσμενή εξαίρεση από υπάρχον κανόνα δικαίου που ρυθμίζει το ζήτημα ειδικά και στη βάση της αρχής της ισότητας και αρχής της ανεξαρτησίας των Δικαστών, τηρουμένων των επιταγών του Συντάγματος.

Όπως αναφέρεται στο σύγγραμμα του Αρι

### 3 Implications of CJEU Rulings and ECHR

#### 3.1 Annual leave

*CJEU, case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

(i) "Article 7 (1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time is to be construed as contradicting national case law under which a worker who has been unlawfully dismissed and subsequently reinstated in accordance with national law, following the annulment of his dismissal by a court decision, is not entitled to paid annual leave for the period between dismissal and reinstatement, because, during the period this did not provide real work to the employer."

(ii) "Article 7 (2) of Directive 2003/88 is to be construed as contradicting national case-law according to which, in the event of termination of employment of an employee who has been unlawfully dismissed and subsequently re-employed in accordance with national law, following annulment upon dismissal by a court decision, this employee is not entitled to receive monetary compensation for the paid annual leave which he had not used during the period between his illegal dismissal and his re-employment."

No such case has been brought before Cypriot courts.

In Cyprus, leave is regulated in the Law on [Annual Leave with Pay](#), which provides the general framework for paid leave and the WTD law, the Law on Organisation of Working Time (Law 63(I)/2002 as amended). The WTD Law provides that all employees are entitled to four weeks of paid leave in accordance with the terms and conditions provided

by the legislation or the collective agreements and/or the practice on obtaining the right and the granting of leave (Art. 8(1)).

Those employed under public law are possibly entitled to statutory leave in accordance to Section 57 of the Law on General Principles of Administrative Law, 158(I)/1999. Section 57 provides that following a decision of annulment of an administrative decision or act, the decision is reversed and the administration must restore the status quo ante, i.e. introduce the necessary changes to restore the position the damaged party held prior to the issuance of the annulled act, i.e.:

*"Ο περί των Γενικών Αρχών του Διοικητικού Δικαίου Νόμος του 1999, 158(I)/1999). The Greek text reads as follows: "Επειτα από ακυρωτική απόφαση η πράξη εξαφανίζεται και η διοίκηση υποχρεούται να επαναφέρει τα πράγματα στη θέση στην οποία βρίσκονταν πριν από την έκδοση της πράξης που ακυρώθηκε."*

In the case of workers employed under private law, matters are regulated by the Law on Termination of Employment, Περί Τερματισμού της απασχόλησης, 24/1967 . The Greek text of 3(1) reads as follows:

*"Νοείται περαιτέρω ότι, προκειμένου περί εργοδοτών οι οποίοι απασχολούν πέραν των δεκαεννέα εργοδοτούμενων, σε περίπτωση κατά την οποία κριθεί ότι ο τερματισμός της απασχόλησης του εργοδοτούμενου ήταν έκδηλα παράνομος ή παράνομος και κακόπιστος, τότε το Δικαστήριο Εργατικών Διαφορών δύναται, αν κατά τη γνώμη του οι περιστάσεις το δικαιολογούν και ο εργοδοτούμενος το έχει ζητήσει ως θεραπεία, να διατάξει την επαναπρόσληψη του εργοδοτούμενου και ταυτόχρονα την καταβολή αποζημίωσης για τη ζημιά την οποία πράγματι ο εργοδοτούμενος υπέστη ως συνέπεια της απόλυσης του, νοουμένου ότι το ποσό αυτό δε θα υπερβαίνει τα ημερομίσθια δώδεκα μηνών."*

Section 3(1) provides that in the case of employers who employ more than 19 employees, in the event that the termination of the employment relationship was found to be manifestly illegal or unlawful and in bad faith, the Labour Court may, if in its opinion the circumstances justify it, the employer has requested a review, to order the reinstatement of the employee. At the same time, the Court may order payment of compensation for the damages the employee actually suffered as a result of the dismissal, provided that this amount does not exceed 12 months of wages.

## 4 Other Relevant Information

Nothing to report.



# Czech Republic

## Summary

(I) Extraordinary measures have been taken by the government in relation to the COVID-19 crisis.

(II) A Draft Act introduces a compensation bonus for employees employed on a zero-hours contract

(III) The Supreme Court has dismissed a claim of unequal treatment based on sex, age and health

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

The government and the individual ministries (as well as other authorities) have adopted a number of extraordinary measures with the aim of limiting the spread of COVID-19 within the population.

We have already informed of the relevant measures in Flash Report No. 03/2020, Flash Report No. 04/2020, Flash Report No. 04/2020, Flash Report No. 05 /2020, and Flash Report No. 05 /2020. In the present report, we reflect on recent developments. Most of the measures adopted in connection with the COVID-19 crisis have, however, been lifted.

#### 1.1.1 Travel ban

The Protective Measure of the Ministry of Health No. MZDR 20599/2020-15/MIN/KAN of 17 July 2020 are available [here](#) and [here](#).

With effect as of 20 July 2020 (00:00), all individuals who entered the territory of the Czech Republic after this date are required:

- to report to a provider of medical services in case of developing any symptoms indicating infection with the COVID-19 disease;
- agreement to be examined when crossing the border into the territory of the Czech Republic and to cooperate with the authorities in case of any symptoms.

All persons who stayed in the territory of one of the countries not listed as low risk for more than 12 hours in the last 14 days are required to contact the public hygiene authorities after entering the territory of the Czech Republic (with exceptions) and must subject to a COVID-19 test (at their own cost).

In case the above stated persons fail to contact the public hygiene authorities within 72 hours, the regional hygiene stations are required to adopt necessary measures.

The above persons must further wear protective respiratory equipment until they present a negative COVID-19 test, until the end of a quarantine measure (if applicable), or for a period of 14 days.

All foreign citizens of third countries that are not listed as low-risk countries and all foreign citizens who have temporary stay or permanent residence permits registered in one of these countries are banned from travelling into the territory of the Czech Republic (with certain exceptions).

Persons entering the territory of the Czech Republic still have the obligation to notify the competent hygiene station in listed cases, to be tested for COVID-19, etc.

Quarantine or isolation can be ordered to persons entering the territory of the Czech Republic.

Applications for visa and residence permits are not accepted in embassies in countries that are not listed as low-risk countries fulfilling the criterion of reciprocity (with exceptions). Certain administrative proceedings on residence permits from certain states are stayed.

Employers and end users of employees who are citizens of countries that are not listed as low-risk countries, or who are citizens of low-risk countries but have visited countries that are not listed as low-risk countries for more than 12 hours in the last 14 days, are not allowed to enter their workplace, unless they present the employer or end user with a negative COVID-19 test not older than 4 days.

All persons who stayed in the territory of one of the countries not listed as low-risk countries for more than 12 hours in the last 14 days are restricted in their free movement in the Czech Republic until they present a negative COVID-19 test, until the end of a quarantine measure (if applicable) – with certain exceptions (performance of work or business, travels necessary to meet basic needs, doctor visits, funerals, etc.).

### 1.1.2 General restrictions on free movement of persons

The extraordinary measure of the Ministry of Health No. MZDR 15757/2020-26/MIN/KAN of 23 July 2020 is available [here](#).

With effect as of 27 July 2020 (00:00), theatre, music, film, and other art events, sporting, cultural, religious, dancing, traditional or similar events, or other assemblies, public and private alike, where attendance exceeds 1 000 persons for outdoor events or where attendance for indoor events exceeds 500 persons, are prohibited – with exceptions.

Restrictions on free movement of persons have, to a large extent, been lifted.

Movement and stay without protective respiratory equipment (such as respirators, drapes, face masks, headscarves, etc.) is prohibited when attending an event with an excess of 100 participants if it takes place indoors (with certain exceptions – children under 2, athletes during training, competition, or matches, persons with certain mental disorders, etc.).

### 1.1.3 Compensation bonus for employees

The Draft Act amending Act No. 159/2020 Coll. on compensation bonus in connection with the crisis measures adopted in response to the SARS CoV-2 coronavirus, as amended, has been signed by the President and is to be published in the Collection of Laws and is available [here](#).

The Draft Act introduces a compensation bonus that is to be provided to employees employed on the basis of zero-hours contracts—i.e. either based on an “agreement on work performance” (DPP) or on an “agreement on working activity” (DPC)—who could not (partially or at all) perform work under these arrangements for one of the following reasons:

- reasons on the part of the employer arising in connection with health hazards or extraordinary measures of the government adopted in connection with the COVID-19 crisis (especially closing of operations, decrease in demand for goods and services, decrease or termination of deliveries necessary for operation);
- reasons on the part of the employee arising in connection with health hazards or extraordinary measures of the government adopted in connection with the

COVID-19 crisis (especially employee's quarantine, or the necessity to take care of a child or other family members).

The compensation bonus will be provided to persons who performed work between 1 October 2019 and 31 March 2020 based on DPP or DPC and participated in the sickness insurance scheme for at least four calendar months (such participation requires the employee to earn at least CZK 10 000 per month in the case of DPP, or CZK 3 000 per month in the case of DPC) and the employee may not at the same time participate due to being employed on other grounds. Concurrence with other employment activities is not possible.

The compensation bonus is to be provided for the period between 12 March 2020 and 31 August 2020 (if all conditions are fulfilled) in the amount of CZK 350 per day (i.e. approx. EUR 13.32 per day).

The compensation bonus cannot be drawn in addition to other bonuses provided by the State (such as unemployment bonuses).

The Draft Act has been signed by the President and is to be published in the week from 3 August to 7 August 2020. The Draft Act will enter into effect on the day following the date of publishing.

This is an important/substantial development in the Member State. The State assistance will also be afforded to persons employed based on zero-hours contracts who had relied on the income from these arrangements prior to the COVID-19 crisis and who have since lost that income.

## 2 Court Rulings

### 2.1 Unequal treatment and discrimination

*Supreme Court, case 21 Cdo 3516/2018, 29 April 2020*

The Supreme Court has ruled that *"the fact that a bonus is a non-claim salary component alone does not lead to the conclusion that it is wholly up to the employer to decide to whom (and in what amount) to give the bonus. The criteria set for assessment of equality of treatment in remuneration apply even in case of a non-claim salary component (the amount of which the employer determines by own decision) – these criteria do not allow for the employee to be adversely affected based on one of the discrimination grounds"*.

The Supreme Court has further ruled that the fact that the employee was assigned to a different task and transferred to another department within the boundaries agreed upon in the employee's employment contract does not alone mean that such a re-assignment (transfer) cannot constitute unequal treatment (or discrimination).

The decision was issued on 29 April 2020 under File No. 21 Cdo 3516/2018.

The employee claimed that she had experienced unequal treatment and was discriminated against based on sex, age and health:

- despite good results at work, she was not paid a bonus by the employer (whereas other comparable employees were paid the bonus);
- she was (without reason) assigned a different task and transferred to another department of the employer.

The lower courts ruled that the bonus was a so-called non-claim salary component (where the employer establishes the employee's claim to be paid the bonus only based on own decision), and that it was at the employer's discretion to decide to not pay the bonus. The lower court further did not consider the re-assignment (transfer) as unequal treatment, as this had occurred within the agreed upon type of work (job).

The Supreme Court ruled that although it is up to the employer to decide whether or not to provide the bonus, such a decision can still be discriminatory. It further ruled that the same applies to the re-assignment (transfer) – although the employer could, according to the employee’s contract (and type of work agreed upon therein), indeed re-assign (transfer) the employee to another task (department), the decision of the employer to do so could still be motivated by discriminatory reason. The lower courts should have assessed whether there was an objective reason for the re-assignment (transfer), such as operational reasons. The Supreme Court therefore annulled the decision of the lower courts and returned the case for further proceedings.

The ruling diverges from earlier case law.

## 2.2 Working time and rest breaks

*Supreme Court, case 21 Cdo 3521/2019, 24 March 2020*

The Supreme Court has ruled that 30-minute rest and meal breaks are not part of working time, even if the need for the employee to perform work can unexpectedly arise at any time in the course of such a break. The decision was issued on 24 March 2020 under File No. 21 Cdo 3521/2019.

The Labour Code (Sec 88) essentially provides for two types of rest and meal breaks:

- (ordinary) rest and meal breaks – a 30-minute break provided to every employee after 6 hours of uninterrupted work (4.5 hours for employees under 18 years of age) – rest and meal breaks are not considered part of working time; and
- so-called “adequate time for rest and meal” – a necessary amount of time for rest and meal provided in cases where work cannot be interrupted and where “ordinary” rest and meal breaks cannot be provided to employees – such adequate time is considered to be part of working time.

In the present case, an employee (an airport firefighter) worked within an “uninterrupted shift regime” under which employees rotate in 12-hour shifts that cover 24 hours a day and 7 days per week. Within one 12-hour shift, the employee was scheduled by the employer to take two ordinary 30-minute rest and meal breaks. The employees were, however, required to respond to the employer’s call within 3 minutes. The employee claimed that he performed work that could not realistically be interrupted, that the rest and meal breaks were in reality adequate time for a meal and rest and therefore should be considered working time, and that he was entitled to remuneration. Employees were not prohibited from leaving the workplace. It was found that during the relevant period, the employee was not called on to respond during the rest and meal break. The employer claimed that the schedule had been created in such a way as to allow for employees to be able to enjoy the 30-minute rest and meal breaks and for them to be substituted by another employee in case of a call to respond.

The Supreme Court stated that

*“when assessing whether the employee was provided a rest and meal break or adequate time for rest and a meal, the character of work performed by the employee is decisive. The sole fact that the employee performs work within an uninterrupted shift regime does not lead to the conclusion that such employee could not have been provided rest and a meal break. The main characteristic of works that cannot be interrupted is that they cannot be interrupted in the course of the shift due to objective reasons. Objective reasons can only lie with regard to the technology of production, the labour process, or performance of work that requires continuous control and activity on the part of the employee.*

*Organisation of work within a given workplace does not constitute such an objective reason”.*

The Supreme Court concluded that the employee had not been restricted in taking his rest and meal breaks, that the work performed by the employee was not “works that cannot be interrupted” – in this connection, the Supreme Court stated that not even the constant possibility of a sudden necessity of the employee to interrupt his/her rest and meal break in order to perform work can have effect on such conclusions. It decided that in the present case, the employee was taking ordinary rest and meal breaks that were not considered to be a part of working time.

The Supreme Court also stated that

*“the conclusions reached by the CJEU in its judgment C-518/15 in the matter of Ville de Nivelles v Rudy Matzak cannot be applied to the present case. The CJEU dealt with the question whether the stand-by time of a worker who stays at home but has the obligation to respond in case of a call by his employer within 8 minutes—and as such restricts him in using such time for other activities—can be considered working time or if such should be considered rest time. The CJEU judgment does not deal with breaks for meal and rest in the workplace or with the nature of works that cannot be interrupted”.*

The ruling diverges from earlier case law.

### 3 Implications of CJEU Rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The CJEU ruled that

*“Article 7(1) 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 must be interpreted as precluding national case-law according to which the worker, who was unlawfully dismissed and subsequently reinstated in accordance with national law in connection with court decision on annulment of the dismissal, is not entitled to be paid annual leave for the period from the date of dismissal until the date of reinstatement, as the worker did not factually perform work for the employer during said period”.*

The CJEU further ruled that

*“Article 7(2) of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national case-law, according to which the worker, in case of termination of employment based on unlawful dismissal and subsequent reinstatement in accordance with national law in connection with court decision on annulment of the dismissal is not entitled to be paid financial compensation for unused annual paid leave for calendar year for the period from the date of dismissal until the date of reinstatement.”*

Under national law, Section 69(1) of Act No. 262/2006 Coll. the Labour Code (the “Labour Code”) provides that if the employer has given an invalid notice of termination to an employee or if the employer has invalidly terminated the employee’s employment by immediate termination or by termination during the trial period, and if the employee has notified the employer without undue delay in writing that he or she insists on being further employed by the employer, the employment continues to exist and the employer is required to compensate the employee’s salary. The employee is entitled to compensation in the amount of his or her average earnings from the date the employee



notified the employer that he or she insists on being further employed until the time when the employer allows the employee to resume his or her work or when the employment has validly ended.

Section 69(2) of the Labour Code states that if the above period exceeds 6 months, the court may, at the request of the employer, reduce further entitlements of the employee to compensation of his/her salary, whilst the court shall take into account, in particular, whether the employee has in the meantime been employed elsewhere, what work he or she has performed there, and his/her salary or the reason for him/her he or she did not work.

Section 69(3) of the Labour Code states that if the employer has invalidly terminated the employment relationship, but the employee does not notify the employer that he or she insists on further employment with the employer, it shall apply, unless the employee agrees otherwise in writing with the employer that the employment relationship has ended by agreement on the following date:

- a) in case of an invalid notice, on the date of expiry of the notice period;
- b) if the employment relationship was invalidly terminated by immediate termination or during the probation period, on the date when the employment relationship was to end through such termination; in these cases, the employee has the right to compensation for salary in the amount of his/her average earnings for the term of the notice period.

Pursuant to Section 72 of the Labour Code, the invalidity of termination of an employment relationship by notice, immediate termination, termination during the probation period or termination by agreement may be claimed by the employee at the courts no later than within two months from the date on which the employment relationship was to end through such termination.

The Supreme Court has stated that the above regulation is *lex specialis* which provisionally (for the duration of uncertainty as to whether the termination of employment is valid) governs the rights and duties between the employer and the employee, whereas other provisions of the Labour Code (including provisions relevant with regard to the employee's entitlement to annual paid leave and compensation for unused annual paid leave) do not apply (i.e. are suspended).

The Supreme Court of the Czech Republic has ruled that

*"if the employer unlawfully terminates the employee's employment, the employee is not entitled to compensation of salary for unused leave for the period beginning on the day on which the employment relationship was to end, and ends on the date on which the employer reinstates the employee, upon which the employment relationship was lawfully terminated, or until the court rules that the termination of the employment relationship by the employer was unlawful".* It stated that *"the employee cannot be entitled to compensation of salary for unused leave as he did not work during the relevant period, and with regard to the fact that such period is not considered performance of work by law"* (see Decision of the Supreme Court of 30 March 2004, File No. 21 Cdo 2343/2003).

Based on the above, it is clear that under national law, the employee is not entitled to annual leave entitlements for the period from the date of dismissal until the date of reinstatement – therefore, we can conclude that national law (and in particular, national case law) is not in line with the conclusions of the CJEU's ruling.

As of yet, there have not been any notable responses to the CJEU's present ruling in the national context.

## 4 Other Relevant Information

Nothing to report.

# Denmark

### Summary

(I) COVID-19 has had a relatively low impact in Denmark in comparison to neighbouring countries and has re-opened society to a very large extent. No new legislative measures have been introduced in July.

---

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*



The joined cases C-762/18 and C-37/19 reviewed the question whether there is a right to annual leave in the time period starting from an unlawful dismissal until the date of reinstatement of the employee.

The judgment covers a Bulgarian and an Italian case.

Bulgarian employee QH's employment was terminated by a decision of 29 April 2004. The dismissal was declared unlawful by a district court, and QH was reinstated in her position on 10 November 2008.

QH was denied the right to annual leave in the period from the date of the unlawful dismissal until her reinstatement, as QH had not performed work during this period according to the Bulgarian Court of Cassation. QH filed a claim for damages against the Court of Cassation for its disregard of EU law in its decision.

Italian employee CV's employment was terminated and she was reinstated multiple times between 2002 and 2010 in her employment position. According to two judgments, the dismissals were unlawful.

CV was first awarded financial compensation for untaken annual leave between her work periods. Her employer objected and the Italian district court repealed its ruling based on the fact that the employee had not performed work for the employer in the said period.

First, the CJEU found that Article 7(1) of Directive 2003/88 precludes national case law according to which a worker, who has been unlawfully dismissed and subsequently reinstated in her position by a legal judgment, is not entitled to *annual paid leave* for the intermittent time period.

The Court emphasised that the right to paid annual leave is a particularly important principle in Union law and follows from the Charter of Fundamental Rights, Art. 31(2).

Although the rules on annual leave are based on the precondition that the employee performs work, specific situations may arise during which the employee is not able to perform his/her work functions, e.g. in case of sick leave.

The Court found that the principles underpinning the case law on sick leave were sufficiently comparable to the present situation, as the employee was similarly deprived of the opportunity to perform work in an unforeseeable manner and independently of the employee's will.

If the employee had obtained work from another employer during the intermittent period, the employee could not claim rights to annual leave from the initial employer for that work period.

Secondly, the CJEU found that Article 7(2) of Directive 2003/88 precludes national case law according to which a worker, who has been unlawfully dismissed and subsequently reinstated in her position based on a legal judgment, is not entitled to *financial compensation* for untaken annual leave for the intermittent time period during which she was terminated from that position.

The Court emphasised that the fundamental right to annual leave also covers the right to receive pay and financial compensation for annual leave, which had not been taken at the expiry of the employment relationship.

The ruling may have implications for Danish law from a technical point of view, but in practice, such circumstances will very rarely arise.

Under Danish law, there is no general duty to nullify or reinstate the employee in case of unlawful termination. The consequence of an unlawful dismissal is determined in collective agreements as well as in statutory acts prohibiting dismissals on certain grounds. Legal sources providing for a duty to consider reinstatement are very rare.



Even when reinstatement is provided, it is very rarely applied due to the damaged relationship between the employee and the employer, i.e. cooperation based on mutual trust and confidence has often become impossible as a consequence of the (attempted) dismissal and the ensuing judicial dispute.

The question about a right to paid annual leave during a potential interim period is not addressed in the preliminary works, and has not been the subject of legal proceedings.

A legal basis to claim reinstatement is provided in the Act on Freedom of Association.

The only unconditional right to be reinstated in case of wrongful dismissal is provided in section 4(1) of the Act on Freedom of Association, and only applies to public sector employees. The only published case on Art. 4(1), U 1992.469 H, provided reinstatement for the employee – and there was no interruption between the dismissal and reinstatement.

The same provision gives private sector employees an option to claim reinstatement, except in extraordinary situations, where continuing the employment relationship is clearly unreasonable after balancing both parties' interests. Private employees are, as a general rule, not reinstated, but are instead provided financial compensation, cf. section 4a of the Act on Freedom of Association, and e.g. an unpublished ruling of the Eastern High Court of 30 November 1990, case No. 261-90.

The right to reinstatement in the Act on Freedom of Association is supported by a procedural duty of the Court to assess claims for reinstatement with utmost urgency with a view to ruling on the issue before the expiry of the notice period. In addition, the court can suspend the dismissal during the proceedings, as well as give suspensory effect in case of an appeal of the ruling of first instance, cf. sections 4b (1) and (2). The effect is that the employee continues his/her employment relationship until the question of reinstatement is settled by the courts. For this reason, it would be highly unlikely that an interruption between an unlawful dismissal and a reinstatement under the Act on Freedom of Association would arise.

If the issue is resolved before the expiry of the notice period, the employment relationship simply continues and all rights continue to apply. This is the aim of the Act and the duty of the courts to give such matters utmost urgency. If the issue is not resolved before the expiry of the notice period, the purpose of the right to suspend the dismissal is to prevent an interruption of the employment relationship. If dismissal is suspended, the employment relationship continues, including all rights applicable to the employee. If a claim is appealed, the purpose of the court's right to give suspensory effect is to prevent interruption in employment. In this case, if given suspensory effect, the employee's rights are upheld until the matter is resolved. Although the preparatory works do not specifically address a right to take paid annual leave during a potential period of suspension of the termination of the employment contract, the consequence of suspending a dismissal is that the employment simply continues with all of the employee's rights and duties.

An interruption between dismissal and reinstatement under the Act on Freedom of Association is highly unlikely, as the purpose of the procedural remedies extended to the courts is to prevent such an interruption. The only outcome is that the employee is reinstated without an interruption or do not reinstate the employee and instead provides financial compensation.

A legal basis is also provided in the [Act on Equal Treatment of Men and Women with regard to employment](#) and the [Act on Equal Pay](#).

The Act on Equal Treatment section 16 (1) cf. section 9 provides that unlawful dismissals based on requests to take maternity, parental or adoption leave, or based on periods of absence due to maternity, parental or adoption leave or in other ways relating to pregnancy, maternity, parental or adoption leave, such as requests for changes in

working time and working patterns, must be nullified. Dismissals are nullified except when—taking the interest of the parties into account—it is clearly unreasonable to continue the employment relationship. The option to claim reinstatement is not unconditional, and the length of the judicial proceedings often entails that reinstatement is clearly unreasonable. This is also foreseen in the preliminary works, cf. Preliminary Works to an Amendment to the Act on Equal Treatment of Men and Women, FT 1988-89.

The Act on Equal Pay in sections 3(1), 3 (3), 5a (1)- (2), and 5b provides that a dismissal in breach of the victimisation clause can be declared null and void, except—taking the parties' interests into account—when it is obviously unreasonable to require the employment relationship to be upheld or the employee to be reinstated, cf. section 3(3).

The Act on Equal Treatment and the Act on Equal Pay do not extend procedural remedies to the courts to suspend dismissals or give suspensory effect to appeals. There is no available case law in which the courts have ruled to reinstate the employees under the Act on Equal Treatment or the Act on Equal Pay—even if the employee has claimed reinstatement—as the relationship of trust and confidence between the employee and the employer has indeed been severely damaged by the dismissal and the legal proceedings. Instead, financial compensation is extended to the unlawfully dismissed employees.

An interruption between an unlawful dismissal and reinstatement based on these legal provisions is also highly unlikely. The preliminary works do not address the rights and duties of the parties in case of reinstatement after a break. The provisions provide that the legal consequence is a nullification, i.e. employment should be continued with all rights and duties intact. The legal implications of this with regard to a right to paid annual leave when not providing work has not been assessed by the courts.

Finally, a legal basis to claim reinstatement in case of unreasonable dismissal is provided in some collective agreements.

The [LO/DA General Agreement](#) in section 4(3) litra E provides a right to claim nullification and/or reinstatement of unreasonably dismissed workers. A claim for reinstatement cannot be awarded if cooperation between the employer and the employee has suffered or is likely to suffer significant damage in case of continued employment or reinstatement. Reinstatement is very rarely ordered, and usually when the employer is quite large: in the Dismissal Board ruling of 28 August 2018, AN 2018.0617, the employer was considered large enough to consider reinstatement, in particular with a view to the employee's high level of seniority; in the Dismissal Board ruling of 18 May 2011, AN 2011.0397, a seniority of 33 years and the size of the company was the reason to order nullification and reinstatement of 1 of 5 dismissed employees; in the Dismissal Board ruling of 11 April 1989, AN 338.89, nullification was not awarded due to the company's small size.

In rulings under the LO/DA General Agreement, the employee has a right to pay in the interim period, cf. rulings No. 618.1994 and No. 2009.0449. The right to annual leave is not specifically addressed in the rulings.

In the [Collective Agreement for Academics in the State](#), reinstatement requires that the employer does not object, cf. section 22(10).

According to the LO/DA Agreement of Cooperation (*Samarbejdsaftalen*), the parties must aim to reinstate employees who have been unreasonably dismissed. This does not provide a legal basis for reinstatement, but requires the social partners to seriously consider reinstatement as a remedy.

In conclusion, only few legal bases provide the option to claim reinstatement in case of wrongful termination. The Act on Freedom of Association is constructed with a view to preventing interruptions between the end of the notice period and the re-instatement.



The legal bases in the other acts are very rarely used, as the relationship between the employee and the employer has been severely damaged. When a right to reinstatement is included in the collective agreement, the employee has a right to remuneration for the interim period.

A right to *take* paid annual leave in the interim period is provided by the accrued paid annual leave from the 'former' employer, who must deposit accrued and untaken paid annual leave with the publicly administrated Holiday Fund upon termination of any employee for any reason. The right to *accrue* annual paid leave from the employer in the interim period is not addressed in case law, statutory provisions or collective agreements.

A right to *accrue* paid annual leave in the interim period is provided as part of the Unemployment Benefits scheme available to members of unemployment insurance funds. Approximately 70 per cent of all employees are members of unemployment insurance funds.

## 4 Other Relevant Information

### 4.1 Current situation in respect of COVID-19

COVID-19 has had a relatively low impact in Denmark in comparison to neighbouring countries and has re-opened society to a very large extent. Restaurants, cafés, cinemas, theatres, etc. have been re-opened under restrictions and guidelines that must be followed. Restrictions to large gatherings remain effective (200 people as of 8 August 2020), and the borders are slowly re-opening. Denmark has, however, experienced an increase in the infection rate in the last month (from 18 to 61 per day), and the health authorities now recommend the use of face masks when using public transport during rush hour. Assistance packages have been extended and are now being phased out. No new legislative measures have been taken in July.

# Estonia

## Summary

(I) Estonia has implemented Directive (EU) 2018/957 on time. The necessary amendments for posted workers entered into force on 30.07.2020.

(II) The Estonian Ministry of Justice published a draft law on the protection of whistleblowers. With this draft, Estonia aims to transpose Directive (EU) 2019/1937.

---

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 Posted workers

On 30 July 2020, the new [amendments](#) of the Working Conditions of Employees Posted to Estonia Act entered into force. With those amendments, Estonia has transposed Directive (EU) 2018/957. According to the amendments, the following conditions have been modified:

- a) The agency and user company must agree whether a worker can be posted to another country;
- b) The law also details the conditions for postings. It is not sufficient to guarantee the national minimum wage – sector-specific wages need to be complied with. The costs that are connected with temporary business travel to other destinations must be compensated.
- c) In Estonia, a worker can be posted for a period of 12 months. Subsequently, Estonian labour legislation fully applies. It is possible to extend the 12-month period for a total of 18 months.
- d) The employer has an obligation to keep the documents connected to the posted workers for three years starting from the end of the posting period.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The joined cases C-762/18 and C-37/19 concern the guarantee of paid annual leave. The main question was whether and to what extent an employee has a right to paid annual leave, when he/she was wrongfully dismissed, but the court has decided to reinstate the employee. The main question is whether it is possible to claim full paid annual leave or at least compensation for it.

In Estonian labour law, the two cases are of little relevance. The Estonian Employment Contracts Act (ECA) stipulates that in case of termination of an employment contract, it is possible to terminate the employment contract when at least one of the parties



requests it. The majority of disputes on terminations of the employment contract end without reinstatement.

Reinstatement is only an option in case the employment contract of a pregnant worker or an employee representative is terminated. It will nonetheless be the court's decision. In this regard there is no question about guaranteed paid annual leave.

The only option according to Estonian legislation is to compensate unused annual leave. In case there the employee has unused leave, but did not have the possibility to use those days, the employer must compensate those days. This requirement is specified in the law as well as in case law.

Taking this into account, the two cases are of little relevance, because reinstatement according to Estonian labour law is not an option. In case of wrongful dismissal, the only consequence is payment of compensation.

## 4 Other Relevant Information

### 4.1 Protection of whistleblowers

The Ministry of Justice has [prepared](#) a draft of law to transpose Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. In Estonian legislation, there is no regulation on the protection of such persons.

The underlying idea of such regulations is to protect individuals who are in an employment relationship and forward information of breaches to the authorities.

The new draft also details the conditions of protection as well as what type of protection will be guaranteed.

The new regulation will apply to all individuals employed in the public or private sector.

The planned date of entry into force is December 2021.

## Finland

### Summary

(I) Amendments to maritime labour rules on employment contracts, working time, rest periods and complaint procedures came into force on 1 July 2020, but legislative amendments to the modifications made to the guidelines of the ILO's Maritime Labour Convention in 2018 will enter into force later.

(II) A Government Proposal for the implementation of the renewed Posted Workers Directive is still being debated in Parliament.

(III) The Labour Court issued two judgments on collective action.

## 1 National Legislation

### 1.1 Amendments to maritime labour legislation

An Act was passed according to which the amendments made to the guidelines of the ILO's Maritime Labour Convention in 2018 that affect legislation will be enforced. A Government Decree ratifying the amendments is scheduled to be issued in autumn 2020. The purpose of the amendments to the guidelines is to ensure continuity of seafarers' employment contracts and the payment of salary in the event of piracy or armed robbery against the ship. The Maritime Employment Contracts Act was amended through the addition of a new paragraph (paragraph 13 b) to the Act, ensuring continuity of the contracts and payments of salary in case of piracy or armed robbery against the ship. The amendment will come into force in accordance with the Government Decree to be issued later.

On the basis of Government Proposal No. 42/2020, additional amendments to the maritime labour legislation were enacted, which relate to the guidelines of the ILO's Maritime Labour Convention. These amendments came into force on 1 July 2020. The provisions on the scope of application of the Seamen's Working Hours Act was amended. The provisions of the Act on minimum rest periods and exceptions to these, the work and guard shift schedules and the record of working hours apply to the chief of the catering department on passenger ships employing more than 15 persons. Moreover, the requirements to record working hours apply to the master of ship in international traffic where, in addition to the master, at least two people work on the ship. These requirements also apply to the chief engineer and first mate.

It is no longer permitted to deviate from the provisions on minimum rest periods on ships in international traffic when a ship performs operations ordered by port authorities or a ship performs necessary guarding services in ports. However, deviations from the restrictions on maximum weekly overtime work are permitted for the performance of these tasks. The same applies to ships in domestic traffic when they perform operations ordered by port authorities or another equivalent authority. In situations where an employee's daily rest period is reduced because of calls for work during that period, the employee must be granted sufficient a compensatory rest period as soon as possible.

An amendment to the Seafarers' Employment Contracts Act requires an employer to provide an employee instructions in his/her employment contract on how the employee can file a complaint about the employer's activities that violate rules on maritime labour legislation. The employer must instruct the employee about the organisation of the complaint procedure on board the ship. The employer must also provide a sufficient framework for addressing complaints.



In addition, the Maritime Annual Holidays Act was amended in terms of appeals; the Act on Working Hours on Vessels in Domestic Traffic was also amended in terms of appeals and deviations to restrictions concerning overtime work and rest periods.

### **1.2 Implementation of the Posted Workers Directive**

Parliament is still debating the Government Proposal (Government Proposal No. 71/2020) to implement the renewed Posted Workers Directive (EU) 2018/957, which was forwarded to Parliament in May. In the Proposal, the government recommends the amendments to the Posted Workers Act would enter into force on 30 July 2020.

## **2 Court Rulings**

### **2.1 Collective action**

*Labour Court, 2020:64 and TT 2020:65, 3 July 2020*

The collective action concerned the dismissal measures considered in the co-determination procedure. The action thus targeted the provision on the employer's right to instruct in the collective agreement in force. The response to the claim admitted a violation of industrial peace and a fine was imposed on the union branch.

## **3 Implications of CJEU Rulings and ECHR**

### **3.1 Paid annual leave**

CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria

The ruling concerned Article 7, paragraphs 1 and 2 of Directive 2003/88/EC. The right to paid annual holiday is a principle of the Union's social policy. Moreover, the right to an annual period of paid leave is provided in the Charter of Fundamental Rights of the European Union. The interpretation of Article 7, paragraphs 1 and 2 of the Directive is based on this and must be taken into account when applying the provisions on the right to paid annual leave in the Annual Holidays Act and collective agreements.

## **4 Other Relevant Information**

Nothing to report.



## France

### Summary

(I) Two decrees have been taken in response to the consequences of the COVID-19 pandemic. A law has also been adopted to postpone the deadline for payment of the exceptional bonus for purchasing power ('Prime Macron').

(II) The Court of Cassation has ruled on freedom of religion, the limitation period and fixed-term employment contracts, paid leave, terminations, trade union representatives, serious misconduct related to working life.

(III) The revised Posted Workers Directive (EU Directive 2018/957 of 28 June 2018) has been transposed into French law by Ordinance No. 2019-116 of 20 February 2019, which will enter into force on 30 July 2020.

## 1 National Legislation

### 1.1 Allowances for employees exposed to the coronavirus

[Decree No. 2020-859 of 10 July 2020](#) amends the initial [Decree No. 2020-73 of 31 January 2020](#) and extends the adaptation of the conditions for granting daily allowances paid by social security for employees exposed to the coronavirus.

As a reminder, since 1 May, most of the employees who benefited from exceptional sick leave due to the coronavirus have been placed in partial employment. Some employees continued to benefit from the exceptional sick leave provided for by the aforementioned Decree of January 31, in particular those subject to an isolation measure after having been in contact with a person infected with the coronavirus. [Decree No. 2020-637 of 27 May 2020](#) had already extended the period of application of these measures until 10 October 2020 (three months from the date of the end of the state of health emergency).

Usually, entitlement to daily allowance paid by social security is not unlimited: insured persons may not receive more than 360 daily allowances per 3-year period, regardless of whether they are suffering from one or more illnesses; those suffering from a long-term illness are entitled to daily allowances for a maximum period of 3 years (Articles [L. 323-1](#) and [R. 323-1](#) of the Social Security Code).

The Decree of 10 July 2020 now specifies that daily allowances paid to insured persons who are subject to a measure of isolation, eviction or home support, and who are therefore unable to continue working, are not taken into account in the calculation of these maximum payment periods.

In addition, the waiting period for daily allowances paid by social security is still suspended until 10 October 2020 for employees who are subject to an isolation measure because they have been identified as a "contact case" or are covered by the "quarantine" measure under [Law No. 2020-546 of 11 May 2020](#).

These provisions are applicable up to three months after the end of the state of health emergency, i.e. until 10 October 2020.

### 1.2 Reduced activity to retain employment

[Decree No. 2020-926](#) specifies the terms and conditions of the specific mechanism for partial activity referred to as "reduced activity to retain employment", implemented by [Law No. 2020-734 of 17 June 2020](#), allowing companies that are facing a permanent reduction of activity to reduce working hours in return for commitments to retain employment.

This mechanism applies to agreements and documents sent to the administration for extension, validation or approval by 30 June 2022, at the latest.

- **Requirement of a collective agreement**

The implementation of this specific partial activity scheme requires the existence of a collective agreement, signed within an establishment, company, group, or branch. In the latter case, the employer establishes a document in accordance with the stipulations of the industry-wide agreement.

- **Content of the collective agreement**

In particular, the collective agreement must define:

- the activities and employees affected by the specific partial activity,
- the maximum reduction of working hours and,
- employment and vocational training commitments.

The preamble of the collective agreement must also include a diagnosis of the economic situation and the business prospects of the establishment, company, group or branch. It must define:

- (1) The starting date and duration of application of the specific partial activity scheme;
- (2) The activities and employees to which this system applies;
- (3) The maximum reduction of working hours below the legal duration;
- (4) Commitments in terms of employment and professional training;
- (5) The procedures for informing the signatory employee trade unions and employee representative institutions about the implementation of the agreement. This information is provided at least every three months.

The agreement may also provide:

- the conditions under which the executives working within the scope of the agreement, the corporate officers and the shareholders, in compliance with the powers of the administrative and supervisory bodies, shall make efforts proportionate to those required of employees during the period of recourse to the system;
- the conditions under which employees take paid leave and use their personal training account, before or during the implementation of the system ;
- the means of monitoring the agreement by the trade unions.

- **Information to the administrative authority**

Before the end of each specific partial activity approval period (i.e. at least every 6 months), the employer must submit the following to the administrative authority:

- a report on compliance with commitments in terms of employment and professional training and on the procedures for informing the signatory employee trade unions and staff representative institutions on the implementation of the agreement;
- an updated analysis of the economic situation and business prospects of the establishment, company or group ;
- the minutes of the last meeting at which the Social and Economic Council, if any, was informed about the implementation of this partial activity scheme.

- **Reimbursement in case of non-compliance with the commitments**

In the event of dismissal for economic reasons of one or more employees placed in a specific partial activity during the period of recourse to the scheme, the employer must reimburse the sums received for the partial activity for each of those employees.

Where the dismissal for economic reasons concerns an employee who was not placed in a specific partial activity but whom the employer had undertaken to retain, the sum to be reimbursed is equal, for each termination, to the ratio between the total amount of the sums paid to the employer under the specific partial activity allowance and the number of employees placed in a specific partial activity.

Such reimbursement may be waived if it is incompatible with the economic and financial situation of the company. It is also specified that the administrative authority may suspend payment of the allowance, if it finds that the employer does not respect the commitments agreed.

- **Reduction in working hours**

The reduction in working hours that may give rise to compensation may not exceed 40 per cent of the legal duration. This reduction shall be assessed for each employee concerned over the period of application of the system provided for in the collective agreement or unilateral document.

Its application may lead to a temporary suspension of activity.

However, this limit may be exceeded in exceptional cases resulting from the particular situation of the company, by decision of the administrative authority, and under the conditions laid down in the collective agreement. In addition, the reduction in working hours may not exceed 50 per cent of the legal duration.

- **Compensation**

An employee placed in partial activity shall receive an hourly indemnity from his/her employer corresponding to at least approximately 70 per cent of his/her gross salary (i.e. approximately 84 per cent of the net salary).

The employer, by way of compensation, receives an allowance from the French government equal to:

- 60 per cent of the gross hourly wage, up to a limit of 4.5 times the hourly rate of the minimum wage for agreements (or documents) sent to the administrative authority before 1 October 2020, which corresponds to the rate currently being applied;
- 56 per cent of this remuneration for agreements (or documents) transmitted on or after 1 October 2020.

- **Duration of the mechanism**

The benefit of this specific partial activity scheme is granted for a period of 6 months, within a timeframe of 24 months, consecutive or not, over a reference period of 3 consecutive years.

### 1.3 Prime Macron

As a reminder, employers may award their employees an exceptional bonus for purchasing power ("Prime Macron") which is exempt from income tax and social security contributions under certain conditions, pursuant to Article 7 of the [French Social Security Financing Law for 2020 No. 2019-1446 of 24 December 2019](#). To benefit from social and tax exemptions, one of the main conditions was that employers had to pay the bonus by 30 June 2020, at the latest (which was postponed by [Ordinance No. 2020-385 of 1 April 2020](#) to 31 August 2020).

Article 3 of [Law No. 2020-935 of 30 July 2020](#) extends the deadline for payment of the bonus from 31 August to 31 December 2020.

## 2 Court Rulings

### 2.1 Freedom of religion

*Labour Division (Chambre sociale) of the Court of Cassation, case No. 18-23.743, 8 July 2020*

An employee was dismissed for serious misconduct, with the employer accusing him of wearing a beard "cut in a way that is deliberately meaningful in both religious and political terms". Claiming to have been dismissed for a discriminatory reason, the employee took the matter before the industrial tribunal to have his dismissal declared null and void.

The Labour Division of the Court of Cassation first pointed out that in accordance with the provisions of Articles [L. 1121-1](#) and [L. 1132-1](#) of the Labour Code and the provisions of Council Directive No. 2000/78/EC of 27 November 2000, restrictions to the freedom of religion must meet the following cumulative conditions:

- be justified by the nature of the particular occupational activities;
- genuine and determining occupational requirement;
- determining and proportionate to the aim sought.

The internal rules and regulations may not contain provisions restricting individual rights and individual and collective freedoms that are not justified by the nature of the occupational task or proportionate to the aim sought (Article [L. 1321-3](#) of the Labour Code).

The Court of Cassation also recalled that the employer may provide in the internal rules and regulations or in a memorandum a neutrality clause prohibiting employees from wearing any political, philosophical or religious signs in the workplace, provided that this general and undifferentiated clause is only applied to employees who are in contact with clients.

In this case, the Court of Appeal noted that the employer had not produced any internal rules and regulations or a memorandum specifying the nature of the restrictions it intended to impose on the employee due to the security requirements invoked. Therefore, as approved by the Court of Cassation, the Court of Appeal considered that the prohibition of wearing a beard, in so far as it manifests religious and political convictions, and the order by the employer to return to an appearance considered to be more neutral by the latter, constituted the existence of discrimination based directly on the employee's religious and political convictions.

In addition, the Court stated that it follows from the Court of Justice of the European Union's case law (CJEU, 14 March 2017, case C-188/15) that the notion of "genuine and determining occupational requirement" within the meaning of Article 4 §, 1 of Directive No. 2000/78, refers to an occupational requirement objectively dictated by reason of the nature of the specific occupational activities concerned or of the context in which they are carried out, without it being able to cover subjective considerations, such as the employer's willingness to take account of the particular wishes of the client.

Therefore, a client's request relating to the wearing of a beard that might be connoted in a religious manner could not be regarded as a genuine and determining occupational requirement within the meaning of Article 4 § 1 above. However, the Court of Cassation accepts, on the other hand, that the legitimate purpose of ensuring the safety of the company's staff and customers may justify restrictions of individual rights and individual and collective freedoms and, consequently, allows the employer to impose a neutral appearance on employees when this is made necessary to prevent an objective threat, which it is up to the employer to demonstrate.

In the present case, the employer did not demonstrate the alleged specific threat related to wearing beards in the performance of the employee's activities, such as to constitute a justification for a proportionate infringement of the employee's freedoms. Thus, the employee's dismissal was based on a discriminatory ground, the employer having relied on what it considered to be the expression by the employee of his political or religious beliefs. The dismissal was null and void pursuant to [Article L. 1132-4](#) of the Labour Code.

*" 4. Il résulte des articles L. 1121-1, L. 1132-1, dans sa rédaction applicable, et L. 1133-1 du Code du travail, mettant en œuvre en droit interne les dispositions des articles 2, § 2, et 4, § 1, de la Directive 2000/78/CE du Conseil du 27 novembre 2000, que les restrictions à la liberté religieuse doivent être justifiées par la nature de la tâche à accomplir, répondre à une exigence professionnelle essentielle et déterminante et proportionnées au but recherché. Aux termes de l'article L. 1321-3, 2° du Code du travail dans sa rédaction applicable, le règlement intérieur ne peut contenir des dispositions apportant aux droits des personnes et aux libertés individuelles et collectives des restrictions qui ne seraient pas justifiées par la nature de la tâche à accomplir ni proportionnées au but recherché.*

*« 5. L'employeur, investi de la mission de faire respecter au sein de la communauté de travail l'ensemble des libertés et droits fondamentaux de chaque salarié, peut prévoir dans le règlement intérieur de l'entreprise ou dans une note de service soumise aux mêmes dispositions que le règlement intérieur, en application de l'article L. 1321-5 du Code du travail dans sa rédaction applicable, une clause de neutralité interdisant le port visible de tout signe politique, philosophique ou religieux sur le lieu de travail, dès lors que cette clause générale et indifférenciée n'est appliquée qu'aux salariés se trouvant en contact avec les clients.*

*« 6. Ayant relevé que l'employeur ne produisait aucun règlement intérieur ni aucune note de service précisant la nature des restrictions qu'il entendait imposer au salarié en raison des impératifs de sécurité invoqués, la cour d'appel en a déduit à bon droit, sans être tenue de procéder à une recherche inopérante, que l'interdiction faite au salarié, lors de l'exercice de ses missions, du port de la barbe, en tant qu'elle manifesterait des convictions religieuses et politiques, et l'injonction faite par l'employeur de revenir à une apparence considérée par ce dernier comme plus neutre caractérisaient l'existence d'une discrimination directement fondée sur les convictions religieuses et politiques du salarié.*

*« 7. Il résulte par ailleurs de la jurisprudence de la Cour de justice de l'Union européenne (CJUE, 14 mars 2017, Micropole Univers, C-188/15), que la notion d'« exigence professionnelle essentielle et déterminante », au sens de l'article 4 § 1 de la directive 2000/78 du 27 novembre 2000, renvoie à une exigence objectivement dictée par la nature ou les conditions d'exercice de l'activité professionnelle en cause. Elle ne saurait, en revanche, couvrir des considérations subjectives, telles que la volonté de l'employeur de tenir compte des souhaits particuliers du client.*

*« 8. Dès lors, la cour d'appel a exactement retenu que si les demandes d'un client relatives au port d'une barbe pouvant être connotée de façon religieuse ne sauraient, par elles-mêmes, être considérées comme une exigence professionnelle essentielle et déterminante au sens de l'article 4 § 1 de la directive n° 2000/78/CE du Conseil du 27 novembre 2000, l'objectif légitime de sécurité du personnel et des clients de l'entreprise peut justifier en application de ces mêmes dispositions des restrictions aux droits des personnes et aux libertés individuelles et collectives et, par suite, permet à l'employeur d'imposer*



*aux salariés une apparence neutre lorsque celle-ci est rendue nécessaire afin de prévenir un danger objectif.*

*« 9. Ayant relevé que si l'employeur considérait la façon dont le salarié portait sa barbe comme une provocation politique et religieuse, il ne précisait ni la justification objective de cette appréciation, ni quelle façon de tailler la barbe aurait été admissible au regard des impératifs de sécurité avancés, la cour d'appel a constaté, appréciant souverainement les éléments de preuve qui lui étaient soumis et sans être tenue de s'expliquer sur ceux qu'elle décidait d'écartier, que l'employeur ne démontrait pas les risques de sécurité spécifiques liés au port de la barbe dans le cadre de l'exécution de la mission du salarié au Yémen de nature à constituer une justification à une atteinte proportionnée aux libertés du salarié.*

*« 10. La cour d'appel en a déduit à bon droit, sans encourir le grief de la quatrième branche du moyen qui manque en fait, que le licenciement du salarié reposait, au moins pour partie, sur le motif discriminatoire pris de ce que l'employeur considérait comme l'expression par le salarié de ses convictions politiques ou religieuses au travers du port de sa barbe, de sorte que le licenciement était nul en application de l'article L. 1132-4 du Code du travail. »*

## 2.2 Fixed-term employment

*Labour Division (Chambre sociale) of the Court of Cassation, case No. 18-19.727, 8 July 2020*

In the present case, an employee was hired under 731 fixed-term contracts between 1998 and 2015, and brought an action before the industrial tribunal on 15 January 2016 to have her employment relationship reclassified as a permanent one.

The Court of Appeal ruled in favour of the employee, which the employer contested before the Court of Cassation, considering that the reclassification action brought by the employee was statute-barred on the basis of Article [L. 1471-1](#) of the Labour Code, which provides that

*"any legal actions relating to the performance or breach of the employment contract shall be time-barred upon the expiry of a 2-year period from the day on which the person bringing such action has become aware or should have become aware of the facts on the basis of which such person can exercise his/her right".*

The Supreme Court rejected the appeal and confirmed its position, since it had already decided that the limitation period for an action of reclassification of a fixed-term contract has as its starting point the end of the fixed-term contract, or in the case of a succession of fixed-term contracts, the end of the last contract (Cass. soc., 8 November 2017, No. 16-17.499 ; Cass. soc., 29 January 2020, No. 18-15.359).

*"5. Selon les articles L. 1471-1 et L. 1245-1 du code du travail, dans leur rédaction antérieure à celle issue de l'ordonnance n° 2017-1387 du 22 septembre 2017, toute action portant sur l'exécution du contrat de travail se prescrit par deux ans à compter du jour où celui qui l'exerce a connu ou aurait dû connaître les faits lui permettant d'exercer son droit.*

*6. En application de l'article L. 1242-1 du code du travail, par l'effet de la requalification des contrats à durée déterminée, le salarié est réputé avoir occupé un emploi à durée indéterminée depuis le jour de son engagement par un contrat à durée déterminée irrégulier.*

*7. Il en résulte que le délai de prescription d'une action en requalification d'un contrat à durée déterminée en contrat à durée indéterminée fondée sur le motif*

*du recours au contrat à durée déterminée énoncé au contrat a pour point de départ le terme du contrat ou, en cas de succession de contrats à durée déterminée, le terme du dernier contrat et que le salarié est en droit, lorsque la demande en requalification est reconnue fondée, de se prévaloir d'une ancienneté remontant au premier contrat irrégulier.*

*8. La cour d'appel a constaté que le dernier contrat à durée déterminée conclu entre les parties avait cessé à l'échéance du terme le 1er mars 2015. Elle a relevé que la salariée avait introduit le 15 janvier 2016 une action en requalification de la relation de travail en contrat à durée indéterminée en soutenant avoir occupé un emploi lié à l'activité normale et permanente de l'entreprise.*

*9. Elle en a exactement déduit, sans modifier l'objet du litige ni méconnaître le principe de la contradiction, que cette action n'était pas prescrite et que la salariée pouvait demander que la requalification produise ses effets à la date du premier engagement irrégulier.*

*10. Le moyen n'est donc pas fondé."*

## 2.3 Paid leave

*Labour Division (Chambre sociale) of the Court of Cassation, case No. 18-21.681, 8 July 2020*

In the present case, an employee, hired as a lorry driver, was off work following a work accident. The employee was dismissed for serious misconduct on several grounds :

- unjustified long-term absence from the day of his return visit;
- refusal to apply the company's internal procedures, for having refused to sign a form requesting deferred leave and a form requesting the recovery of leave imposed by the employer.

The employer claimed that he was entitled to impose the leave dates since he considered that the notice period applied to earned paid leave but not to deferred leave.

It must be recalled that in terms of paid leave, the employer must inform the employees of the leave period at least 2 months before the start of that period and then individually inform each employee of the dates of his/her end date at least 1 month before the actual end of the employment relationship (Article [L. 3141-16](#) of the Labour Code).

In the present case, the Court of Appeal, approved by the Court of Cassation, found that there was no real and serious cause for the employee's dismissal, and considered that deferred leave is of the same nature as earned leave and the rules for determining the order of departure apply in the same way in both cases. Therefore, by imposing to take the leave without observing a notice period, the employer abused its managerial power, which deprived any wrongful character to the employee's refusal.

*"7. Eu égard à la finalité qu'assigne aux congés payés annuels la directive 2003/88/CE du Parlement européen et du Conseil du 4 novembre 2003, les droits à congés reportés ou acquis ont la même nature, de sorte que les règles de fixation de l'ordre des départs en congé annuel s'appliquent aux congés annuels reportés.*

*8. Ayant constaté qu'il résultait des termes de la lettre de licenciement que l'employeur avait entendu contraindre le salarié à prendre, du jour au lendemain, l'intégralité de ses congés payés en retard, en lui imposant sans délai de prévenance de solder l'intégralité de ses congés reportés, la cour d'appel a pu en déduire que l'exercice abusif par l'employeur de son pouvoir de direction privait le refus du salarié de caractère fautif.*



9. *Le moyen n'est donc pas fondé.*"

## 2.4 Termination of employment

*Labour Division (Chambre sociale) of the Court of Cassation, case No. 19-10.534, 8 July 2020*

In the present [case](#), a protected employee was dismissed for serious misconduct in 2012 after obtaining prior authorisation for dismissal from the labour inspector. This decision was cancelled by the Administrative Court of Appeal on 23 June 2015 and the employer's appeal against this decision was declared inadmissible by the Council of State. This cancellation was therefore final.

However, while proceeding to reinstate the employee, the employer refused to pay the employee the compensation owed pursuant to Article [L. 2422-4](#) of the Labour Code in the event of annulment of an administrative authorisation for dismissal. The employer challenged the final nature of the annulment of the administrative authorisation for dismissal before the court, which entitles the protected employee's right to the compensation provided for in Article [L. 2422-4](#) of the Labour Code. Furthermore, after the reinstatement of the protected employee, the employer initiated new dismissal proceedings on the same facts and obtained a new authorisation for dismissal on 15 February 2016.

The Court of Cassation began by recalling that pursuant to Article [L. 2422-4](#) of the Labour Code, "*the protected employee who is dismissed after obtaining an administrative authorisation that is subsequently cancelled may claim compensation for his or her loss when the cancellation decision has become final*".

It should also be recalled that case law provides that an administrative authorisation, which was issued after the cancellation by the administrative judge of a previous authorisation, cannot have the effect of regularising a posteriori the dismissal pronounced on the basis of the cancelled authorisation ([Cass. soc., 10 December 1997, No. 94-45.337](#)).

Moreover, where the dismissal is invalid due to the final nature of the administrative decision, the payment of compensation remains due until the requested reinstatement is granted ([Cass. soc., 2 February 2006, No. 05-41.811](#)).

Finally, the Court of Cassation stated that :

- a decision cancelling an administrative authorisation shall become final when an appeal has not been filed in time or when no ordinary means of appeal are available against it ;
- the fact that after the annulment by a final decision of the administrative authorisation for dismissal, the employer may resume the dismissal procedure based on the same facts and apply for a new authorisation for dismissal is without prejudice to the final nature of the decision to annul the first authorisation decision on the application of the provisions of Article [L. 2422-4](#) of the Labour Code.

The employee is therefore entitled to compensation covering the period from the date of his first dismissal on 9 August 2012 to his reinstatement in the company on 21 July 2015.

In other words, after having obtained the cancellation of the dismissal authorisation, the protected employee who has been reinstated must be compensated, even if the employer resumes the dismissal procedure.

« 5. En application de l'article L. 2422-4 du Code du travail le salarié protégé, licencié après l'obtention d'une autorisation administrative de licenciement ultérieurement annulée, peut demander indemnisation de son préjudice lorsque la décision d'annulation est devenue définitive.

6. Il résulte de la jurisprudence de la Cour de cassation (Soc., 10 décembre 1997, pourvoi n° 94-45.337, Bull. 1997, V, 435) que l'annulation par le juge administratif d'un refus d'autorisation de licenciement ne vaut pas autorisation de licenciement et une autorisation administrative de licenciement délivrée postérieurement à l'annulation par le juge administratif d'une précédente autorisation ne peut avoir pour effet de régulariser a posteriori le licenciement prononcé sur la base de l'autorisation annulée et tenir en échec le droit à réintégration que le salarié tient de l'annulation par le juge administratif de la précédente autorisation. Par ailleurs, la Cour a déjà jugé (Soc., 2 février 2006, pourvoi n° 05-41.811, Bull. 2006, V, n° 61) que le caractère définitif de la décision administrative privant le licenciement d'un salarié protégé de validité n'a d'effet que sur l'exigibilité du paiement de l'indemnité prévue à l'article L. 412-19 du Code du travail destinée à réparer le préjudice subi par le salarié évincé de l'entreprise, qui perdure tant que la réintégration qu'il a demandée ne lui est pas accordée.

7. Une décision d'annulation d'une autorisation administrative devient définitive lorsqu'il n'a pas été formé de recours dans les délais, ou lorsqu'aucune voie de recours ordinaire ne peut plus être exercée à son encontre. Le fait qu'après l'annulation par une décision définitive de l'autorisation administrative de licenciement, l'employeur puisse reprendre la procédure de licenciement pour les mêmes faits et demander une nouvelle autorisation de licenciement est sans emport sur le caractère définitif de la décision d'annulation de la première décision d'autorisation et sur l'application des dispositions de l'article L. 2422-4 du Code du travail.

8. C'est dès lors à bon droit que la cour d'appel, constatant que le salarié avait été licencié le 9 août 2012 en vertu d'une autorisation administrative ultérieurement annulée par une décision définitive, a fait droit à la demande d'indemnité formée par le salarié en application de l'article L. 2422-4 du Code du travail. »

## 2.5 Trade union representative

*Labour Division (Chambre sociale) of the Court of Cassation, case No. 19-14.605, 8 July 2020*

It should first be recalled that pursuant to Article [L. 2143-3](#) of the Labour Code, each representative trade union in a company or an establishment with 50 employees or more, constituting a trade union branch, shall appoint one or more trade union representatives to represent it in dealings with the employer from among candidates to the workplace elections, who have received, in their personal capacity and in their category, at least 10 per cent of the votes cast in the first round of the last elections for the works council.

If none of the candidates put forward by the trade union for workplace elections meets the conditions set out in the first paragraph above or if there no longer is a candidate for the workplace elections in the company or establishment who meets these conditions, or if all the elected representatives who meet the conditions referred to in the first subparagraph renounce their right to be appointed as trade union representatives, a representative trade union may appoint a trade union representative from among:

- the other candidates

- or, failing that, from among its members within the company or establishment or from among its former elected representatives who have reached the limit of the term of mandate on the Social and Economic Council.

In the present [case](#), as a result of the resignation of a trade union representative, a representative trade union appointed one of its members because all the other candidates on its list had renounced their candidacy as trade union representatives.

However, the employer seeking the annulment of this designation, considered that under Article [L. 2143-3](#) of the Labour Code :

- it is only in the event of the renunciation of all the elected representatives that the trade union can appoint a member, and not in the event of renunciation of all the candidates. The employer highlighted that there were still three elected representatives from competing lists who had not renounced their candidacy as trade union representatives. Therefore, the trade union should have offered them the position of trade union representative.
- Moreover, the article does not provide for the possibility of appointing one of its members in the event that all candidates renounce their candidacy, as the text refers to the renunciation of all elected representatives.

With regard to the employer's first point of dispute, the Court of Cassation held that while it was not out of the question that a trade union could appoint a candidate on the list of another trade union, who meets the conditions, as a trade union representative, the Labour Code does not require for the trade union to propose, prior to the appointment of a trade union representative, that all candidates obtain at least 10 per cent of all votes, taking all trade union lists together, to be appointed as trade union representatives.

On the second point, the Court of Cassation specified that when all elected representatives or all candidates included in the last workplace elections have renounced their right to be appointed trade union representatives, the trade union may appoint one of its members as a trade union representative within the company or establishment or one of its former elected representatives who has reached the limit of three successive terms of a mandate on the social and economic council.

The Court of Cassation ruled the designation of the member as a trade union representative to be valid.

*« 4. L'article L. 2143-3 du Code du travail, dans sa rédaction issue de la loi n° 2018-217 du 29 mars 2018, fait obligation au syndicat représentatif qui désigne un délégué syndical de le choisir parmi les candidats aux élections professionnelles qui ont recueilli au moins 10 % des suffrages exprimés au premier tour des dernières élections au comité social et économique. Aux termes du deuxième alinéa de ce texte, si aucun des candidats présentés par l'organisation syndicale aux élections professionnelles ne remplit les conditions mentionnées au premier alinéa de ce texte, ou s'il ne reste, dans l'entreprise ou l'établissement, plus aucun candidat aux élections professionnelles qui remplit ces conditions, ou si l'ensemble des élus qui remplissent les conditions mentionnées audit premier alinéa renoncent par écrit à leur droit d'être désigné délégué syndical, le syndicat peut désigner un délégué syndical parmi les autres candidats ou, à défaut, parmi ses adhérents au sein de l'entreprise ou de l'établissement ou parmi ses anciens élus ayant atteint la limite de durée d'exercice du mandat au comité social et économique fixée au deuxième alinéa de l'article L. 2314-33.*

*5. S'agissant de l'article L. 2143-3, alinéa 2, du Code du travail, tel qu'issu de la loi n° 2008-789 du 20 août 2008, qui disposait « S'il ne reste, dans l'entreprise ou l'établissement, plus aucun candidat aux élections professionnelles qui remplit*

les conditions mentionnées au premier alinéa, une organisation syndicale représentative peut désigner un délégué syndical parmi les autres candidats ou, à défaut, parmi ses adhérents au sein de l'entreprise ou de l'établissement », la Cour, après consultation de l'ensemble des organisations syndicales représentatives de salariés et d'employeurs, a décidé que cette obligation n'a pas pour objet ou pour effet de priver l'organisation syndicale du droit de disposer du nombre de représentants syndicaux prévus par le code du travail ou les accords collectifs dès lors qu'elle a présenté des candidats à ces élections dans le périmètre de désignation. Elle en a déduit que s'il n'est pas exclu qu'un syndicat représentatif puisse désigner un salarié candidat sur la liste d'un autre syndicat qui a obtenu au moins 10 % des voix et qui l'accepte librement, l'article L. 2143-3 du Code du travail n'exige pas de l'organisation syndicale qu'elle propose, préalablement à la désignation d'un délégué syndical en application de l'alinéa 2 de cet article, à l'ensemble des candidats ayant obtenu au moins 10 %, toutes listes syndicales confondues, d'être désigné délégué syndical (Soc., 27 février 2013, pourvoi n° 12-15.807, Bull. 2013, V, n° 65).  
6. Par la loi n° 2018-217 du 29 mars 2018, le législateur a entendu éviter l'absence de délégué syndical dans les entreprises.

7. Il en résulte qu'il y a lieu à nouveau de juger que, s'il n'est pas exclu qu'un syndicat puisse désigner un salarié candidat sur la liste d'un autre syndicat, qui a obtenu au moins 10 % des voix et qui l'accepte librement, l'article L. 2143-3 du Code du travail n'exige pas de l'organisation syndicale qu'elle propose, préalablement à la désignation d'un délégué syndical en application de l'alinéa 2 de l'article précité, à l'ensemble des candidats ayant obtenu au moins 10 %, toutes listes syndicales confondues, d'être désigné délégué syndical.

8. Par ailleurs, eu égard aux travaux préparatoires à la loi n° 2018-217 du 29 mars 2018, la mention du même texte selon laquelle « si l'ensemble des élus qui remplissent les conditions mentionnées audit premier alinéa renoncent par écrit à leur droit d'être désigné délégué syndical, le syndicat peut désigner un délégué syndical parmi les autres candidats ou, à défaut, parmi ses adhérents au sein de l'entreprise ou de l'établissement ou parmi ses anciens élus ayant atteint la limite de durée d'exercice du mandat au comité social et économique fixée au deuxième alinéa de l'article L. 2314-33 », doit être interprétée en ce sens que lorsque tous les élus ou tous les candidats qu'elle a présentés aux dernières élections professionnelles ont renoncé à être désignés délégué syndical, l'organisation syndicale peut désigner comme délégué syndical l'un de ses adhérents au sein de l'entreprise ou de l'établissement ou l'un de ses anciens élus ayant atteint la limite de trois mandats successifs au comité social et économique.

9. Dès lors, ayant constaté que M. [X], précédent délégué syndical désigné par le syndicat, avait démissionné de ses fonctions et que les autres candidats de la liste du syndicat avaient renoncé à exercer les fonctions de délégué syndical sur le site [...], le tribunal en a déduit à bon droit que le syndicat avait valablement désigné l'un de ses adhérents, M. [Y], en qualité de délégué syndical de l'établissement.»

## 2.6 Serious misconduct related to working life

Labour Division (Chambre sociale) of the Court of Cassation, case No. 18-18.317, 8 July 2020

A flight attendant was [dismissed](#) for serious misconduct on the grounds that he had failed to fulfil his professional obligations and harmed the company's image by stealing the wallet of a client from a hotel where he was staying as a member of the company's crew.

Considering that the alleged acts were part of his private life, since they were committed outside his working hours and place of work, he contested his dismissal before the industrial tribunal.

An act committed in the employee's private life is not covered by the employment relationship and therefore cannot serve as a basis for disciplinary dismissal ([Cass. soc. 16 December 1997 No. 95-41.326](#)). Nevertheless, if the acts committed outside working hours and the place of work are work-related either because they are related to the employee's working life or because they characterise a breach of an obligation arising from the employment contract, they may constitute misconduct and justify disciplinary dismissal.

In the present case, the Court of Appeal, approved by the Court of Cassation, reviewed the dismissal of the employee based on serious misconduct.

First, the Court of Cassation noted that the company had sent a note to the staff representatives indicating the initiation of disciplinary proceedings against the employee and requesting comments from them. Therefore, the employer had fulfilled its obligations in accordance with the internal rules and regulations.

Secondly, the Court of Cassation pointed out that the Court of Appeal correctly established that the acts were related to the employee's working life:

- the acts of theft were committed in a hotel that was a business partner of the employer, who had booked rooms for the members of the flight crew;
- the hotel had reported the theft to the employer and identified the perpetrator as an employee of that company;
- the victim did not file a complaint because of the employer's intervention.

The Court of Appeal also noted that the fault, as set out in the letter of dismissal, was characterised:

- by committing a theft in a partner hotel, the employee had failed in his professional obligations, which resulted not only from his employment contract but also from the internal rules and regulations ;
- the employment contract imposed a duty of loyalty towards the employer and the internal rules and regulations provided under the heading "general attitude" an obligation of discipline, work conscience, good behaviour and discretion ;
- the employee had damaged the image of the company and the profession.

*"Mais attendu que, selon l'article 4.2 de l'annexe II du règlement intérieur de la société Air France, relative aux dispositions propres au personnel navigant commercial, d'une part, la convocation à l'entretien préalable en vue d'une éventuelle sanction doit indiquer l'objet de la réunion en spécifiant si la sanction envisagée est une sanction du premier ou du second degré et, dans ce dernier cas, qu'il peut s'agir d'une mesure de licenciement sans préavis ; qu'au cours de l'entretien, le motif de la sanction envisagée est indiqué au salarié ; que, d'autre part, l'entretien préalable est obligatoirement précédé d'une information écrite des délégués du personnel titulaires de l'établissement et du collège auquel appartient le salarié en cause, sauf opposition écrite de ce dernier ; que les délégués du personnel font part de leurs éventuelles observations par écrit avant l'entretien préalable ; qu'il en résulte que l'article 4.2 de l'annexe II du règlement intérieur de la société Air France n'impose pas que l'information écrite adressée aux délégués du personnel avant la tenue de l'entretien préalable expose les faits motivant la sanction envisagée;*

*Et attendu, qu'ayant constaté que la société Air France avait adressé aux délégués du personnel une note datée du 20 septembre 2013 faisant mention de l'engagement d'une procédure disciplinaire du second degré à l'encontre du salarié et sollicitant des observations éventuelles de leur part avant le 2 octobre*



2013, date de l'entretien préalable, la cour d'appel a exactement décidé que l'employeur avait satisfait aux obligations mises à sa charge par l'article 4.2 de l'annexe II du règlement intérieur; (...)

Mais attendu que la cour d'appel a relevé que les faits de vol visés dans la lettre de licenciement, dont le salarié ne contestait pas la matérialité, avaient été commis pendant le temps d'une escale dans un hôtel partenaire commercial de la société Air France, qui y avait réservé à ses frais les chambres, que c'est à la société Air France que l'hôtel avait signalé le vol et que la victime n'avait pas porté plainte en raison de l'intervention de la société, de sorte que les faits reprochés se rattachaient à la vie professionnelle du salarié ; que la cour d'appel a, sans méconnaître les termes du litige, légalement justifié sa décision ; que le moyen n'est pas fondé ;"

### 3 Implications of CJEU Rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The decision handed down by the Court of Justice of the European Union calls into question the established case law of the Court of Cassation.

The Court of Cassation considers that the suspension period between the date of dismissal up to the date of reinstatement where it is established that a worker has been unlawfully dismissed, which cannot be considered 'working time', only entitles the employee to a suspension indemnity for the unlawful termination, but does not entitle him/her to paid leave ([cass. soc. 11 May 2017, No. 15-19731](#)).

The purpose of this suspension indemnity is to compensate the employee for the loss of wages suffered between the termination and his/her reinstatement. Insofar as the employee did not work during the suspension period, the Court of Cassation considers that no right to paid leave can be granted to the employee.

Recently, the Court of Cassation again reaffirmed its refusal to grant paid leave to an employee who was reinstated following an unlawful dismissal, since the period of suspension cannot be considered working time. Indeed, the Court of Cassation deemed that "*entitlement to leave is only acquired in the event of actual work and that the period of suspension cannot be considered as working time, the Court of Appeal correctly decided that the employee could not benefit from days of leave during this period*" ([cass. soc. 30 January 2019, No. 16-25672](#)).

In France, some absences are assimilated as working time by the law and count as working days when calculating the days for paid leave. It follows from Article L. 3141-5 of the Labour Code that what "*is considered as working time for the purpose of determining the duration of the leave*:"

1° *paid leave periods ;*

2° *maternity, paternity, childcare and adoption leave periods;*

3° *Mandatory rest provided for in Articles L. 3121-30, L. 3121-33 and L. 3121-38 ;*

4° *Rest days granted under the collective bargaining agreement concluded pursuant to Article L. 3121-44*

5° *Periods up to an uninterrupted period of one year, during which the performance of the employment contract is suspended due to an accident at work or an occupational disease;*

6° *Periods during which an employee is maintained or recalled to national service for any reason whatsoever".*

Suspension periods between the date of unlawful dismissal and the date of reinstatement are not covered by this provision.

#### 4 Other Relevant Information

The revised Posted Workers Directive (EU Directive 2018/957 of 28 June 2018) has been transposed into French law by [Ordinance No. 2019-116 of 20 February 2019](#).

Its provisions will enter into force on 30 July 2020.

- **Obligation to provide information in case of posting by a temporary work agency (Article L. 1262-2-1 of the Labour Code)**

A new information obligation has been introduced in the Labour Code for temporary work. If the user company is established in France, it will have to inform the foreign temporary work agency of the rules applicable in terms of remuneration in France for the duration of the posting. The user company will only have to justify by any means that it complied with this obligation in the event of an inspection by the labour inspectorate.

In the event of failure to comply with this information obligation, the user company may be subject to an administrative fine where the temporary employment agency fails to comply with the applicable rules concerning remuneration. The amount of the fine is up to EUR 4,000 per seconded employee and up to EUR 8,000 if the violation is repeated within two years from the date of notification of the first fine, up to a total of EUR 500,000 (Article L. 1264-2 of the Labour Code). The administrative authority may take into account the employer's 'good faith' to determine the amount of the fine.

If the user company is established abroad and occasionally carries out an activity in France, it must inform the foreign temporary employment agency of the rules applicable in France prior to the posting.

The aim of these new obligations is to clarify for both the temporary employment agency and the user undertaking the nature of their obligations and to ensure more systematic respect for the rights of seconded employees (Report to the President of the Republic on Order No. 2019-116).

- **Equal treatment (Article L. 1264-3 of the Labour Code)**

From 30 July 2020, employers will have to guarantee each posted employee the *'minimum or basic wage, as well as all other benefits and add-ons paid, directly or indirectly, in cash or in kind, by the employer to the employee by reason of his/her employment'*.

The employers will have to guarantee each posted employee equal treatment in relation to any form of employee compensation, of whatever nature (i.e. fixed or variable, in cash or in kind, etc.).

Moreover, the employer will have to reimburse the professional expenses corresponding to the expenses of a special nature inherent to the function or employment borne by the seconded employee in the performance of his/her duties. Indeed, business expenses are explicitly added to the list of 'core' provisions of French law to which the equal treatment rule applies, namely 'transport, meals and accommodation expenses' borne by the posted employee.

- **Maximum duration of posting (Article L. 1262-4 of the Labour Code)**

As of July 30, 2020, a different legal regime will apply to postings, depending on whether the duration is 12 months at most, or exceeds 12 months.

The specific regime for posting, with its rules derogating from the Labour Code, will apply only to posting for a period of 12 months at most. In the event that a posted





employee is replaced by another posted employee in the same position, the 12-month period referred to above will have been reached when the cumulative period of posting of successive employees in the same position is equal to 12 months.

From 30 July 2020, where an employee has been seconded in France for more than 12 months (taking into account, where appropriate, the period worked before 30 July 2020), he/she will automatically be subject from his/her 13th month of posting on French territory to all provisions of the French Labour Code, except the following:

- provisions regarding the hiring of employees ;
- provisions regarding modification on economic grounds, transfers or terminations of the employment agreement;
- the secured voluntary mobility scheme;
- provisions regarding fixed-term employment agreements, including all similar contracts.

Where justified by the performance of the service, the employer may extend the posting to 18 months after a reasoned declaration addressed to the administrative authority before the expiry of the 12-month period.

## Germany

### Summary

- (I) The Act implementing Directive (EU) 2018/957 has entered into force.
- (II) The Federal Cabinet wants to ensure orderly and safe working conditions in the meat industry. To achieve this, the so so-called Occupational Safety and Health Control Law (*Arbeitsschutzkontrollgesetz*) has been tabled.
- (III) Members of Parliament are demanding prompt implementation of the CJEU ruling of 14 April 2019.
- (IV) The Federal Government has submitted a draft law (19/20976) on the Revised European Social Charter.
- (V) The Federal Labour Court has submitted a request for a preliminary ruling to the CJEU regarding paid annual leave.
- (VI) The statutory minimum wage is to be gradually increased to EUR 10.45 according to a recommendation of the Minimum Wage Commission.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 Posting of workers

The Act implementing Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services entered into force on 30 July 2020.

In future, companies will be bound by the customary remuneration regulations in force in the host country. This means that employees posted to Germany will also be entitled to the collectively agreed wages established in generally binding collective agreements. Accommodation for foreign employees must in future also comply with the minimum standards of the Workplace Ordinance. The law extends the catalogue of working and employment conditions that also apply to posted employees. EU employers are not allowed to charge their employees for accommodation, travel costs or meals. Posting-related costs should therefore generally be borne by the employer according to the rules in their country of origin. In addition, workers posted to Germany must also be reimbursed for travel, accommodation and subsistence costs if they are temporarily not employed at their place of residence in Germany. Allowances received by posted workers to offset the costs they incur as a result of their posting (accommodation, travel, subsistence) are not part of their remuneration. They may not be deducted from the employee's salary. The employer is to bear the costs incurred as a result of the posting in accordance with the rules in force in the country of origin. For employees who are posted abroad by their employer for over 12 months, all working conditions prescribed in Germany apply after this period. In exceptional cases, employers may apply for an extension of six months.

Some [new provisions](#) have been added to the existing law. Particularly relevant are

Section 2a:

“Remuneration within the meaning Section 2(1) No. 1 are all components of the remuneration the employee receives from the employer in cash or in kind for the work performed. Remuneration includes, in particular, basic remuneration, including components of remuneration linked to the type of work, the employee’s qualification and professional experience, the region, as well as allowances, supplements and gratuities, including overtime rates. Remuneration also includes regulations on the due date of remuneration, including exceptions and their conditions”.

Section 2b:

“(1) If the employee receives an allowance for the time spent working in Germany (secondment allowance) from the employer based abroad, it can be offset against the employee’s remuneration in accordance with Section 2(1) No. 1. This does not apply if the secondment allowance is paid to reimburse costs actually incurred as a result of the secondment (secondment costs). In particular, travel, accommodation and catering costs are deemed to be secondment costs. (2) If the working conditions applicable to the employment relationship do not specify which components of a posting allowance are paid as a reimbursement of the posting costs or which components of a posting allowance are part of the employee’s remuneration, it shall be irrefutably presumed that the employee’s entire posting allowance is paid as a reimbursement of the posting costs”.

Section 13(b):

*“(1) If an employee is employed by an employer established abroad for over twelve months in Germany, after the initial twelve months of employment in Germany, in addition to the working conditions in accordance with Sections 2 to 4a, all working conditions stipulated in laws and regulations and in generally binding collective agreements applicable to the place of employment shall apply to this employment relationship, but not 1) the procedural and formal requirements and conditions for entering into or terminating the employment relationship, including post-contractual non-competition obligations; and 2) the company pension scheme. Section 2(2) applies accordingly. (2) If the employer submits a notification before the expiry of the twelve-month period of employment in Germany, the period after which the additional working conditions referred to in paragraph 1 apply to the employees concerned shall be extended to 18 months. The notification must be made in text form in accordance with § 126b of the Civil Code to the competent authority of the customs administration in German and must contain the following information: 1. surname, first names and date of birth of the employee, 2. the place of employment in the country, the construction site for construction services, 3. The reasons for exceeding the twelve-month period of employment in Germany, and, 4. the likely duration of service in Germany at the time of notification. The competent authority of the Customs Administration shall acknowledge receipt of the notification. (3) The Federal Ministry of Finance may by statutory order in agreement with the Federal Ministry of Labour and Social Affairs determine without the consent of the Bundesrat that 1) in deviation from paragraph 2 sentence 2, by what means and under what technical and organisational conditions a notification can be exclusively transmitted electronically, and 2) the manner in which the receipt of the notification is acknowledged by the competent authority in accordance with paragraph 2 sentence 3. (4) The Federal Ministry of Finance may determine the competent authority pursuant to paragraph 2 by statutory order without the consent of the Bundesrat”.*

### 1.2.2 Occupational Safety and Health Control Law

The Federal Cabinet wants to ensure orderly and safe working conditions in the meat industry. To achieve this, the so so-called [Occupational Safety and Health Control Law](#) (*Arbeitsschutzkontrollgesetz*) was tabled on 29 July 2020.

The new law lays down uniform nationwide rules for the inspection of companies and the accommodation of employees in other sectors as well. The law prohibits the use of external staff in the core business of the meat industry. The slaughterhouse operator will be responsible for all employees in his/her core business. So-called work contracts will be banned from 01 January 2021 onwards and temporary work from 01 April 2021 onwards: slaughtering, cutting and meat processing may in future only be carried out by the owner's own permanent staff. This regulation will not apply to the butchery trade. In future, there will be uniform, binding inspection quotas for the federal states, as well as focal inspections in risk sectors. The controls are to be carried out by the industrial safety authorities. Minimum standards are to apply to the accommodation of employees, including off-site. According to the ministry, employers will be required to inform the relevant authorities of workers' place of residence and work. To effectively monitor compliance with the minimum wage regulations for employees, an obligation to record working hours digitally is to be created in the meat industry. The Ministry of Labour has also emphasised that higher fines will also be introduced for violations of the Working Hours Act.

The prohibition of operating slaughterhouses by way of an award of so-called work contracts affects the freedom to provide services under Article 56 TFEU. In addition to the ban of discrimination, this includes a ban of restrictions in the sense of the so-called Gebhard formula. According to this formula, the freedom to provide services is also protected against obstacles and other measures that make it unattractive. The prohibition of the supply of temporary workers also affects the freedom to provide services (as well as Article 4(1) of the Temporary Agency Work Directive). A [recent expert opinion](#) commissioned by the Ministry of Health of North Rhine-Westphalia denied an infringement of European law with reference to the above mentioned aspects. However, some extremely critical voices are being heard (see Bayreuther, *Verbot von Werkverträgen und Arbeitnehmerüberlassung in der Fleischwirtschaft*, in: *Neue Zeitschrift für Arbeitsrecht* (NZA) 2020, p. 773).

### 1.2.3 Demands to implement CJEU ruling C-55/18, 14 April 2019, CCOO

On 30 June 2020, members of the *Bündnis 90/Die Grünen* parliamentary group [called on the Federal Government to](#): 1) finally implement the CJEU ruling of 14 April 2019 consistently by requiring documentation of employees' daily working hours and the beginning and end of their working times; 2) to not extend the so-called COVID 19 Working Hours Ordinance, which allows deviations from existing working time legislation, and to refrain from other measures to extend maximum daily working hours and shorten rest periods; 3) to allow employees greater sovereignty in terms of time by allowing them to influence the duration, location and place of their work. The members refer to two legal opinions demonstrating how the judgment ought to be implemented.

### 1.2.4 Draft law (19/20976) on the Revised European Social Charter

The Federal Government has submitted a draft law (19/20976) on the Revised European Social Charter (*Gesetz zur Revision der Europäischen Sozialcharta*)

According to Article 1 sentence 1 of the draft act reads as follows: "The European Social Charter of 3 June 2007, signed in Strasbourg on 29 June 2007 by the Federal Republic of Germany, is hereby approved on the understanding that the Federal Republic of Germany shall, when depositing its instrument of ratification, make reservations in respect of Articles 4(4), 7(1), 8(2) and (4), 10(5), 21, 22, 24, 30 and 31 and

interpretative declarations in respect of Articles 2(2), 3(2) and (3), 4(1) and (3), 6(4), 7(5), 12(2) and 19(11)".

## 2 Court Rulings

### 2.1 Paid annual leave

*Federal Labour Court, case 9 AZR 401/19, 7 July 2020*

The Federal Labour Court has submitted a request for a preliminary ruling to the CJEU. The aim is to clarify whether and under what conditions the entitlement to paid annual leave of an employee who has suffered a full reduction of his/her earning capacity during the leave year may lapse 15 months after the end of the leave year or, if applicable, at a later date.

Following the CJEU's decision of 6 November 2018 (C-684/16) on Article 7 of Directive 2003/88/EC and Article 31(2) of the CFREU, the Federal Labour Court recognised that the entitlement to statutory minimum leave only expires at the end of the calendar year or of a permissible carry-over period pursuant to Section 7(3) of the Federal Vacation Act (*Bundesurlaubsgesetz*) if the employer has previously specifically requested the employee to take his/her leave in good time in the leave year and has informed him/her that this leave may otherwise lapse and the employee has nevertheless not taken the leave of his/her own free will.

In the event that the employee was prevented from performing work during the holiday year for health reasons, the Court interprets Section 7(3) in accordance with the decision of the CJEU of 22 November 2011 (C-214/10) to mean that statutory holiday entitlements expire 15 months after the end of the holiday year in the event of continued incapacity for work.

To issue a decision in the current legal dispute, the CJEU must now clarify whether Union law allows the holiday entitlement to lapse after the expiry of this 15-month period or, if applicable, after a longer period, even if the employer has not fulfilled his/her obligations to cooperate during the holiday year, although the employee could have taken at least part of his/her annual leave until the onset of the incapacity for work.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The CJEU has ruled that a worker is entitled to paid annual leave for the period between his unlawful dismissal and the resumption of his previous employment or, upon termination of his employment, to an allowance in lieu of paid annual leave not taken.

The situation is difficult to compare to that in Germany as the legal consequence of an inadmissible dismissal under the Dismissal Protection Act (*Kündigungsschutzgesetz*) is the dismissal's ineffectiveness (see Section 1(1) of the Act: "Termination of the employment relationship in respect of an employee whose employment relationship has existed without interruption in the same establishment or undertaking for more than six months shall be legally ineffective if it is socially unjustified.").

However, the Federal Labour Court assumes that if the employer does not grant the leave requested by the employee in due time, the leave entitlement that expired during the period of delay is converted into a claim for damages for granting substitute leave as in rem restitution. This is of significance if the employee and the employer are in dispute about the termination of the employment relationship and the employee has



unsuccessfully requested the employer to grant him/her leave during the termination dispute. If the employer after giving notice of termination denies the existence of the employment relationship and does not grant the requested leave despite a corresponding request by the employee, the employer is in default without the need for a reminder from the employee. Unless there are special circumstances that prevent this, the employee may conclude from the employer's conduct that he/she will not be granted leave. In this case, a warning proves to be a mere formality. If, during the period of delay, it becomes impossible for the employer to grant the employee leave as a result of the limitation of the leave entitlement, the employee's claim for damages in the case of a continuing employment relationship is based on the granting of substitute leave pursuant to section 249(1) of the Civil Code (see, in particular, Federal Labour Court, 9 AZR 760/11, 14 May 2013. According to Section 249(1) of the Civil Code, "a person who is liable for damages must restore the conditions that would have existed if the circumstance obligating him to pay damages had not arisen".

## 4 Other Relevant Information

### 4.1 Increase of statutory minimum wage

The statutory minimum wage shall be gradually increased to EUR 10.45 in accordance with a recommendation of the Minimum Wage Commission.

The Minimum Wage Commission adopted its adjustment decision on 30 June 2020 and presented its report. This is the third report since the introduction of the general statutory minimum wage in Germany in January 2015, which currently stands at EUR 9.35 gross per hour. The Commission recommends an increase of the minimum wage in several steps to EUR 10.45 as of 1 July 2022. The increase in steps are: on 01 January 2020: EUR 9.50; as of 1 July 2021: EUR 9.60; as of 1 January 2022: EUR 9.82; as of 1 July 2022: EUR 10.45.



# Greece

## Summary

Dismissal protection of private school teachers has been amended.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

The recent law 4713/2020 stipulates that the employment contracts of private school teachers are to be terminated in the same way as the contracts of other Greek employees. Hence, these teachers may be dismissed without the employer presenting and proving a serious reason. However, dismissals fall under judicial control as dismissals may not be abusive.

The previous regime stipulated that private teachers' employment contracts could only be terminated for serious and specific reasons prescribed in the law.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

Pursuant to Article 5 of Law 539/1945, upon the termination of the employment relationship, the worker shall be entitled to financial compensation for any unused paid annual leave.

The purpose of the right to paid annual leave is to enable the worker to both rest from carrying out work he/she is required to perform under the contract of employment and to enjoy a period of relaxation and leisure.

Where a worker is unlawfully dismissed, but later reinstated based on a judicial decision, he/she is entitled to paid annual leave for the period from the date of dismissal until the date of reinstatement. The reason is that the worker was unable to perform his or her duties for a reason that was unforeseeable and beyond his or her control.

The Greek Supreme Court has stated that an unlawfully dismissed employee, who is later reinstated based on a judicial decision, is entitled to paid annual leave for the period from the date of dismissal until the date of reinstatement (AreiosPagos 110/1990, EErgD 50, 369). Therefore, Greek law is in line with the CJEU's ruling.

On the other hand, we must take into account that in many cases, the employee would not work for a very long period from the date of the dismissal until his/her reinstatement, which can take 3-4 years. The Greek Supreme Court has stated that the unlawfully dismissed employee, who is later reinstated based on a judicial decision, is entitled to paid annual leave for the period from the date of dismissal until the date of





reinstatement (AreiosPagos 110/1990, EErgD 50, 369). Therefore, Greek law is in line with the European Court's ruling.

Even if it is true that the employee is not responsible for the wrongful dismissal, a formalistic approach should not be adopted. This is valid in particular where the result of this approach will only be the financial compensation of the employee for not taking the paid leave in the past years, and not the right to paid leave in natura.

#### **4 Other Relevant Information**

Nothing to report.

# Hungary

## Summary

The amendment of Articles 295 and 297 of the Labour Code transposes Directive 2018/957/EC.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 Amendment of the Labour Code on posting of workers

The amendment of Articles 295 and 297 of the Labour Code transposes Directive 2018/957/EC (by Act 126 of 2019). The amendment contains the following new provisions, which came into force on 30 July 2020:

- In Article 295(1) c) minimum wage has been replaced by 'generally applicable pay at the workplace'.
- Article 295(1) has been supplemented by the new h) and i) points:
  - h) conditions of accommodation provided by the employer for the employee;
  - i) amount of allowance or cost arising from travel, living expenses or accommodation for employees temporarily posted in Hungary, or for stay in Hungary to work at a place that differs from the usual workplace.
- In Article 295(3), minimum wage has been replaced by 'generally applicable pay at the workplace'.
- In Article 295(4), the following part has been deleted: "As regards employers engaged in construction work that involves the building, remodelling, maintenance, improvement or demolition of buildings, thus in particular excavating, earthwork, actual building work, the assembly and dismantling of prefabricated components, fitting and installations, renovation, restoration, dismantling, demolition, maintenance, upkeep, painting and cleaning work". The new wording of Subsection (4) states: "In terms of the requirements specified in Subsection (1), the workers shall be subject to collective agreements covering the entire industry or an entire sector."
- Article 295(5) has been amended: "If the period of posting described in Subsection (1) exceeds 12 months, this act shall be applied with exception of the provisions in Subsection 7."
- Article 295 has been supplemented by the following new Subsections (6)-(9):

(6) The period of 12 months mentioned in Subsection (5) shall be extended by 6 months in case of a declaration with a reasoning by the foreign employer for the employment authority.

(7) In case of a posting that exceeds 12 months, the following provisions shall not apply:

- a) Chapter 7,
- b) Chapter 10,
- c) Article 228,
- d) provisions on supplementary pension schemes.

(8) If the foreign employer substitutes the employee with another employee who performs work at a given place in the territory of Hungary (substituting posting), the period of posting is equal to the aggregated period of posting of all affected employees. In terms of defining the task performed at the given workplace, the performed task and the place of work must be taken into account.

(9) Subsections (1)-(4) shall not apply if the law otherwise applicable to the employee is more favourable in terms of the conditions specified in Subsection (1).

- Article 297(1) has been supplemented with a new second sentence:  
If the temporary work agency defined in Article 215(1)a temporarily hires out an employee to work for a temporary work agency in the territory of Hungary, the user enterprise is required to inform the temporary work agency on the employment conditions and pay.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

An employee is entitled to paid leave for the period between the termination of the employment relationship and reinstatement, if the court states unfair dismissal and the employee is reinstated in his/her post. The employee is also entitled in this case to compensation for any annual leave days not previously allocated and used. These rights may be affected by another employment relationship during the period between the termination and the reinstatement.

Article 115(2) of the Labour Code:

In the application of Subsection (1), time spent at work shall include:

- a) any duration of exemption from work as scheduled;
- b) any duration of paid leave;
- c) any duration of maternity leave;



- d) the first six months of leave of absence without pay to care for a child (Section 128);
- e) duration of incapacity;
- f) any duration of leave of absence without pay taken up to three months for the purpose of actual reserve military service;
- g) the duration of exemption from work specified in Paragraphs b)–k) of Subsection (1) of Section 55.

Consequently, the Hungarian provisions do not comply with the CJEU's decision, since the employee is not entitled to paid leave for the period between the termination of his/her employment relationship and reinstatement, if the court states unfair dismissal and the employee is reinstated in his/her post. The employee is also not entitled to compensation for annual leave that falls within this period, which was previously not allocated and used.

#### **4 Other Relevant Information**

Nothing to report.

# Iceland

## Summary

Nothing to report.

---

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The judgment will not have an impact on Icelandic labour law. This is primarily due to the fact that reinstatement is neither a rule nor a remedy as a result of unlawful dismissal, with financial compensation being the usual remedy. Additionally, [Act No. 30/1987, on Annual Holiday](#), guarantees annual holiday payments for each salary payment of an employee, see Art. 7(2).

## 4 Other Relevant Information

Nothing to report.

# Ireland

## Summary

The judge ruling on the system of sectoral employment orders to be constitutionally invalid has granted a stay on his order until 31 December 2020.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Sectoral Employment Orders

In the previous Flash Report, reference was made to the High Court's decision declaring the system of sectoral employment orders to be constitutionally invalid: *Náisiúnta Leictreach Conraitheoir Eireann v Labour Court* [2020] IEHC 303. The judge has now granted a stay on his order until 31 December 2020 to facilitate an appeal to the Supreme Court and/or the introduction of primary legislation to rectify the deficiencies he identified: [2020] IEHC 342.

## 3 Implications of CJEU Rulings

Council Directive 2003/88/EC has been transposed in Ireland by the [Organisation of Working Time Act 1997](#) (as amended by section 86 of the [Workplace Relations Act 2015](#) and sections 15 and 16 of the [Employment \(Miscellaneous Provisions\) Act 2018](#)).

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The Court of Justice interpreted Art. 7 of the Working Time Directive as entitling a worker, who had been unlawfully dismissed and then judicially reinstated, to paid annual leave for the period from the date of dismissal until the date of reinstatement. In Ireland, judicial annulment of a dismissal is an extremely rare remedy, only available in public law judicial review proceedings. In cases of unfair dismissal, the predominant remedy is compensation for the financial loss sustained as a result of the dismissal. The remedy of reinstatement is rarely awarded.

Article 7 of the Directive is implemented in Ireland by [s.19 of the Organisation of Working Time Act 1997](#), which provides that employees are entitled to four working weeks of paid annual leave in a leave year in which they "work" at least 1,365 hours (reduced pro rata). The section was amended, however, by [s.86\(1\)\(a\) of the Workplace Relations Act 2015](#) to reflect the decisions in case C-350/06, *Schultz-Hoff* and case C-214/10, *KHS AG* as regards the accrual of annual leave during periods of sick leave.

## 4 Other Relevant Information

### 4.1 Employment wage

The government's [Stimulus Plan](#) will see the Temporary Wage Subsidy Scheme recast





in September as the Employment Wage Subsidy Scheme and the Pandemic Unemployment Payment is to be gradually brought into line with social welfare payments. The plan also includes a series of labour market support in areas such as training and skills, apprenticeships and additional education places, aimed at ensuring that those not fully employed have constructive alternative opportunities while the economy recovers.

The EWSS will run until 31 March 2021, the aim being to keep workers attached to firms. The subsidy will support both employers and workers in a manner similar to the *Kurzarbeit* scheme in Germany. Employers, whose turnover has fallen by 30 per cent, will receive a weekly flat rate subsidy of EUR 203 per worker. The PUP is being extended to April 2021, with a new earnings-related payment rate of EUR 250 and a reduction in the top rate to EUR 300. From 17 September, there will be three rates of payment: for those who previously earned under EUR 200 per week, the payment will be EUR 203; for those who previously earned between EUR 200 and EUR 300 per week, it will be EUR 250; for those who previously earned more than EUR 300, it will be EUR 300. This will be further tapered from 1 February 2021 to two rates: EUR 203 for those who previously earned under EUR 300 and EUR 250 for those who previously earned over EUR 300. From 1 April 2021, those still on the PUP will have to apply for either jobseekers benefit or jobseekers allowance.

# Italy

## Summary

In July, Italian legislation continued to be preoccupied with the COVID-19 pandemic and the measures adopted to contain the spread of contagion and to promote economic recovery. The Constitutional Court has declared Art. 4 Legislative Decree No. 23 of 2015 on dismissal to be unconstitutional.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Security protocols

The Act of 14 July 2020 No. 74 converts Law Decree 16 May 2020 No. 33 into law, with some modifications, providing that all economic activities must comply with the security protocols adopted at national and regional level. The modifications do not affect labour law issues.

#### 1.1.2 Extension of measures

The Decree of the President of the Council of Ministers of 14 July 2020 extends the application of measures to contain the spread of the COVID-19 virus to 31 July. Among these measures is the obligation to respect the shared protocol regulating measures for the containment of the spread of the COVID-19 virus at workplaces, signed by the Italian government and the social partners on 24 April 2020.

#### 1.1.3 Financial support and other measures

The Act of 17 July 2020, No. 77 converts Law Decree 19 May 2020, No. 34 into law, with some modifications, providing urgent measures to support employment, the economy and social policy initiatives related to the epidemiological emergency caused by COVID-19.

The most important modifications are:

Art. 70-*bis*: a further period of *Cassa Integrazione Guadagni* (COVID-19) is granted for 4 weeks to companies that have already used the 14 weeks foreseen in the previous provisions;

Art. 80-*bis*: Article 38 (2) Legislative Decree No. 81 of 2015 shall be interpreted as providing that even in case of irregular use of temporary agency work—from which derives that all aspects related to the management of the employment relationship must be deemed as having been adopted by the user—dismissal is excluded from those acts and shall instead be referred to the temporary work agency;

Art. 90: private sector employees who are at higher risk of contracting COVID-19 because of their personal conditions (such as age, immunosuppression or oncological diseases) are entitled to work remotely, if compatible with their work tasks;

Art. 93: apprenticeships and fixed-term contracts, also within temporary agency work, are extended for a period corresponding to that of the suspension of work due to the COVID-19 crisis.

### 1.2 Other legislative developments

Nothing to report.



## 2 Court Rulings

### 2.1 Compensation in case of dismissal

*Corte costituzionale, No. 150, 16 July 2020*

According to the Constitutional Court (decision of 16 July 2020, No. 150), if a dismissal is declared unlawful because of a violation of formal or procedural legislative requirements, the amount of compensation for the employee cannot only depend on his or her seniority of service.

The Constitutional Court (decision of 9 November 2018, No. 194) has already declared Art. 3 (1) Legislative Decree No. 23 of 2015 unconstitutional, since in the event of unlawful dismissal for lack of motivation, the amount of compensation only depended on the employee's seniority of service (according to Art. 3, the employee would be entitled to compensation for two months of remuneration for each year of service, with a minimum and maximum established by law). In that judgment, however, the Court did not deal with a dismissal in violation of formal or procedural legislative requirements.

Article 4 of Legislative Decree No. 23 provides that the employee would be entitled to compensation for one month of remuneration for each year of service, with a minimum and maximum established by law. By its decision, the Constitutional Court has declared this provision to be unconstitutional because it violates the principles of reasonableness and equal treatment, regulating situations that might be very different in the same way. Consequently, by setting the amount of compensation, the judge shall take not only the seniority of the employee into account and his/her length of service, but also, among others, the severity of the violation, the number of employees and the size of the undertaking as well as the conduct and situation of the parties.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The *Corte di cassazione* will amend its case law according to the decision of the CJEU in joined cases C-762/18 and C-37/19.

## 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 and ECHR

### 3.1 Worker status

*CJEU, case C-658/18 UX, 16 July 2020*

The CJEU's decision in case C-658/18 has no direct implications for Latvian law. In case of similar circumstances as in the present case, the judges would have been considered 'workers' under Latvian labour law. The definition of worker as provided by national law, in particular, in Article 3 of the Labour Law (*Darba likums*, OG No.105, 6 July 2001) is similar to that determined by the CJEU, namely, there must be subordination and work must be performed in return for remuneration. In addition, Latvian law does not provide exemptions for particular groups of workers from the applicability of regular labour or services (in the public sector) and social security laws. There is also no practice of employing part-time workers in the public sector (unless the personal circumstances of a person requires it). The number of part-time employees in Latvia is low in comparison to other EU countries, i.e., approximately 9 per cent of the working population (in 2019 – 9,2per cent, Central Statistics Bureau of Latvia, is available [here](#)).

### 3.2 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The CJEU's decision in the joined cases C-762/18 and C-37/19 has implications for Latvian law, since no relevant national legal regulation or case law of the Supreme Court exists.

The Supreme Court has ruled in numerous cases so far on the rights of reinstated employees. National case law deals with the right to compensation of salary for the period of unlawful dismissal and has held that reinstated person in substance has the right to full restitution of his/her rights (unless he/she has been employed with another employer and such employment was not 'side' or 'additional' work). The Supreme Court, however, has not explicitly dealt with a case on the right to paid annual leave (or compensation in lieu in case of termination of the employment relationship) of reinstated employees. Therefore, the present decision of the CJEU provides useful and necessary clarifications.

What raises general concerns about the decision in case QH is the fact that the CJEU did not take situations into account in which one person is employed by several employers at the same time, i.e. in which the person is unlawfully dismissed from one of his/her part-time employers and in case of reinstatement, he/she has no right to claim paid



annual leave from one of the employers. Such a situation does not warrant restitution in practice, since such an employee does not have the opportunity to use paid annual leave after restitution simultaneously from both (or more) part-time employers. This finding of the CJEU gives the impression that the presumption still holds that the absolute majority of employees are employed on a full-time basis with one employer, which is no longer necessarily the case, taking into account the rapid development of atypical forms of employment, including several simultaneous part-time employment relationships.

In the Latvian national context, the issue of effective compensation in case of unlawful dismissal arises as well – according to national case law, an employer who has unlawfully dismissed an employee does not have to pay compensation for idle time if the employee was working with another employer at the same level salary. In that case, an employer who unlawfully dismissed an employee does not bear any obligation of financial compensation, because non-pecuniary damages under Latvian law are only compensated in case of discrimination, victimisation and emotional harassment cases (case law codification in employment disputes July 2012 – 2017 (*Tiesu prakses apkopojums darba lietās 2012.gada jūlijs – 2017.gads*), Article 126 (pages 59-62) and 149(5) (pages 62-63) of the Labour Law, available in Latvian [here](#); see also Comments on the Labour Law, Free Trade Union Confederation of Latvia, 2020, pages 342-344, 398-403, available in Latvian [here](#)). The CJEU by stating in its present judgment that reinstated employees have no right to paid annual leave for the period of unlawful dismissal up to reinstatement if he/she has been working for another employer has reconfirmed Latvia's national approach to the obligation to compensate an employee's rights if he/she has been unlawfully dismissed.

#### 4 Other Relevant Information

Nothing to report.

# Liechtenstein

## Summary

Liechtenstein has initiated the necessary steps to adapt national law to Regulation (EU) 2016/589.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 Adaption of national law to Regulation (EU) 2016/589

Regulation (EU) 2016/589 aims to fundamentally redesign the European Employment Services network (EURES). EURES is a cooperation network between the European Commission and the public employment services of the EEA Member States and Switzerland, and has been implemented to facilitate the free movement of workers. Liechtenstein has been participating in EURES since 1 January 2007.

The member states must offer their employment services to everyone across borders. The task of the EURES network is to provide information, advice and placement (job matching and job search) to workers, jobseekers and employers and, more generally, to all persons wishing to exercise their right to free movement. As an instrument of employment policy, the EURES network helps create a common European labour market and, in some border regions, to create an integrated regional labour market.

Liechtenstein has developed a draft for the amendment of national law to transpose Regulation (EU) 2016/589 (see below).

The aim of the draft law is to adapt Liechtenstein law in such a way as to ensure the enforcement of rights and obligations in connection with the EURES network.

This is to be achieved through three central points:

- (1) The existing provisions in the law on employment services are to be coordinated with the requirements of Regulation (EU) 2016/589.
- (2) The competences of the public employment services are to be expanded.
- (3) The central function in this context will be assigned to the Office of National Economy (Amt für Volkswirtschaft).

The changes are to be made in the following Act:

Act on Employment Services and Temporary Agency Work (Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsgesetz, AVG, LR 823.10) is available [here](#).

The amendment of this Act will also entail an adaptation of the Ordinance Law:

Ordinance to the Act on Employment Services and Temporary Agency Work (Verordnung zum Gesetz über die Arbeitsvermittlung und den Personalverleih, Arbeitsvermittlungsverordnung, AVV, LR 823.101) is available [here](#).

New additional regulations on public employment services can also be expected.





The Liechtenstein government has submitted a draft law with an accompanying report, which was submitted for consultation. The consultation lasted until 3 December 2019, after which the government evaluated the comments received. Based on the results of the consultation, the government has produced a report and motion for Parliament regarding the amendment of the Act on Employment Services and Temporary Agency Work (Bericht und Antrag der Regierung an den Landtag des Fürstentums Liechtenstein betreffend die Abänderung des Arbeitsvermittlungsgesetzes).

The report and motion and the draft law can be found [here](#).

The next steps will entail the consultation in Parliament and the adoption of the relevant legislative amendment. It is currently not possible to project when the amendment will be passed.

Regulation (EU) [2016/589](#) of the European Parliament and of the Council of 13 April 2016 on a European Network of Employment Services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No. 492/2011 and (EU) No. 1296/2013 (text with EEA relevance).

The amendment is of medium importance. It is an important issue for the economy, the labour market, workers and employers. However, it is mainly a technical matter which does not directly affect the rights and obligations of the parties to the employment contract.

The amendment departs from previous lines of reasoning because no new laws have been created, but the existing structures are being used to implement the changes. Public employment services are already regulated in Liechtenstein law (see Arts. 24–29a of the Act on Employment Services and Temporary Agency Work). These provisions will simply be adapted and expanded.

The purpose of the consultation of municipalities, courts, business and employers' associations, the Liechtenstein trade union and other organisations is precisely to give the government an idea of the likely implications in the legal and political area. For this reason, the government adapts, depending on the outcome, the original draft law to the results of the consultation process where necessary before it is submitted to Parliament.

The main purpose of the amendment is to implement Regulation (EU) 2016/589. An initial review of the draft law reveals that the government is seeking implementation in line with the mentioned Regulation.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

In cases C-762/18 and C-37/19, the CJEU (First Chamber) ruled as follows (exceptionally presented in French as the judgment is currently not available in English):

1. L'article 7, paragraphe 1, de la directive 2003/88/CE du Parlement européen et du Conseil, du 4 novembre 2003, concernant certains aspects de l'aménagement du temps de travail, doit être interprété en ce sens qu'il s'oppose à une jurisprudence nationale en vertu de laquelle un travailleur illégalement licencié, puis réintégré dans son emploi, conformément au droit national, à la suite de l'annulation de son licenciement par une décision judiciaire, n'a pas droit à des congés annuels payés pour la période comprise

entre la date du licenciement et la date de sa réintégration dans son emploi, au motif que, pendant cette période, ce travailleur n'a pas accompli un travail effectif au service de l'employeur.

2. L'article 7, paragraphe 2, de la directive 2003/88 doit être interprété en ce sens qu'il s'oppose à une jurisprudence nationale en vertu de laquelle, en cas de rupture d'une relation de travail intervenant après que le travailleur concerné a été illégalement licencié, puis réintégré dans son emploi, conformément au droit national, à la suite de l'annulation de son licenciement par une décision judiciaire, ce travailleur n'a pas droit à une indemnité pécuniaire au titre des congés annuels payés non utilisés au cours de la période comprise entre la date du licenciement illégal et celle de sa réintégration dans son emploi.

In Liechtenstein law, an unlawful dismissal of an employee usually only leads to a right to compensation, see Section 1173a Art. 47(1) and Art. 56(3) of the Civil Code (Allgemeines bürgerliches Gesetzbuch, LR 210). There are exceptions to this, for example, if dismissal is declared during a period of illness, see Section 1173a Art. 49(1)(a) in conjunction with Art. 49(2)(first half-sentence) of the Civil Code. In such a case, the dismissal is null and void.

If the dismissal is null and void, the employment relationship continues uninterrupted, i.e. also during the period until the employee actually resumes his/her employment relationship as a result of a court decision. The employee is therefore entitled to paid annual leave for that period. It follows from Section 1173a Art. 30(2) of the Civil Code that the paid annual leave is calculated according to the legal duration of the employment relationship and not according to the duration of the actual activity. It is true that paid annual leave may be reduced in certain cases if the employee is prevented from performing work, see Section 1173a Art. 31 of the Civil Code. However, this is not the case here, since the employer himself caused the reason for the prevention of work by unlawfully dismissing the employee. The fact that the employee did not actually perform work for the employer during the aforementioned period does therefore not prevent the employee from acquiring the right to paid annual leave.

If the employment relationship ends without the aforementioned paid annual leave having been taken, the employee is entitled to financial compensation. It is true that paid annual leave must, in principle, be taken in kind, see Section 1173a Art. 33(2) of the Civil Code. However, if this is not possible by the end of the employment relationship, the leave must be paid in cash in accordance with prevailing doctrine and practice.

The Civil Code (Allgemeines bürgerliches Gesetzbuch, LR 210) is available [here](#).

Liechtenstein law is in line with CJEU cases C-762/18 and C-37/19. This case is of minor significance for Liechtenstein law. From a Liechtenstein perspective, there is no deviation from previous lines of reasoning. Implications are neither expected in the legal and political area, nor for the EU *acquis* are to be expected.

## 4 Other Relevant Information

Nothing to report.

# Lithuania

## Summary

The new provisions have transposed EU Directive 2018/957 into Lithuanian law on time.

## 1 National Legislation

### 1.1 Measures to respond to Covid-19 crisis

Nothing to report.

### 1.2 Other legislative developments

On 7 May 2020, the legislator adopted [amendments](#) to the Labour Code of 2017, which came into force on 30 July 2020. As explicitly stated in the Annex to the Law, the objective of these amendments is to transpose EU Directive 2018/957. The following amendments have been incorporated into Articles 108 and 109 of the Labour Code:

(I) The list of national mandatory labour provisions that must be applied to workers posted to Lithuania has been explained in more detail to explicitly encompass national, sectoral and territorial collective agreements, with the condition that the application of these agreements (or provisions thereof) has been declared mandatory (author's note: Lithuania introduced the instrument of extension of the compulsory application of the collective agreements erga omnes since 2002, but this instrument has never been used in practice);

(II) Instead of 'minimum wage', simply 'wage' is mentioned in the list of mandatory applicable provisions;

(III) The list of mandatory applicable conditions was extended to include conditions on the accommodation of employees in case the employer must provide employees working outside their permanent place of work with accommodation, and the conditions of reimbursement of any additional costs (transportation, lodging etc.);

(IV) The per diem allowance shall be deemed as part of the 'wage' if foreseen by the provisions of the applicable law and if they are separate from the employee's additional costs to be reimbursed;

(V) The principle of a duration of 12 months for postings was introduced with the possibility of extending the posting up to 18 months, if certain conditions are met. The principle of the calculation of the duration of the posting on the basis of a single place of work, but not on the employee's characteristics, is new to the Lithuanian system. This rule will not be applicable to international road transport drivers;

(VI) The mandatory applicable conditions explicitly do not cover the conditions on recruitment and dismissal as well as non-competition agreements;

(VII) The explanation that the posted temporary worker will be subject to the principle of non-discrimination, regardless of the duration of his/her posting. The user undertaking shall inform the temporary work agency about the applicable conditions of employment and applicable wages;

(VIII) If the temporary worker is assigned to work for a user undertaking outside Lithuanian jurisdiction, the assignment shall be considered a posting. This novelty has been introduced because of some ambiguities in Lithuanian case law on the question



whether the temporary worker can agree to work outside Lithuanian jurisdiction on a permanent basis, thus avoiding the application of domestic posting rules;

(IX) Road transport drivers will enjoy some additional rights and exceptions from the generally applicable regime;

(X) As previously, posting from third countries will require permission from the national employment agency;

(XI) The labour inspectorate has been assigned to provide additional information about provisions of national, sectoral and territorial collective agreements, if the application of these agreements (or provisions thereof) has been declared mandatory.

The new provisions have transposed EU Directive 2018/957 into Lithuanian law in a timely manner, but the majority of those provisions still remain irrelevant for workers of other Member States because of a lack of posted workers to the territory of Lithuania. Third country undertakings have been controlled more strictly, but the impact of the new legislation will not be significant due to the absence of generally applicable collective agreements in Lithuania.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Paid annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The ruling of the CJEU is not of major relevance for Lithuania, as this situation is explicitly regulated by the Labour Code. In accordance with Article 127 (4) No. 7 of the Labour Code, the number of working days per working year for which annual leave is granted shall include, inter alia, the time of forced absence (in Lithuanian – priverstine pravaiksta). The period during which the employee's termination is under dispute over the legality of the dismissal is recognised as forced absence in Article 218 (1) of the Labour Code.

## 4 Other Relevant Information

Nothing to report.

# Luxembourg

## Summary

- (I) A bill on occupational safety in the context of the pandemic has been deposited.
- (II) A law on provisional labour market reintegration measures has been adopted.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Reintegration measures

The COVID-19 pandemic, including the closures that were ordered, have led to a sharp increase in the unemployment rate (+ 33 per cent). To fight unemployment, a law has introduced a temporary relaxation (until 31 December 2021) of the conditions for access to certain assistance and reintegration measures. This law introduces the following measures, in particular:

- The professionalisation traineeship (*stage de professionalisation*), i.e. a short unpaid training period, which can normally only be offered to jobseekers aged 30 or over (or who are in a job reclassification scheme or are disabled), will be open to all. The only condition is to have been registered with the job centre (ADEM) for at least one month.
- For the reintegration-employment contract (*contrat de reinsertion-emploi*), the ordinary minimum age of 45 has been lowered to 30. For employees in the age bracket from 30 to 45 years, the employer must contribute 50 per cent of the occupancy allowance; for employees in the age bracket 45+, the employer's contribution is reduced from 50 per cent to 35 per cent.
- In principle, assistance for the recruitment of a jobseeker is only available when the employer hires persons over 45 years of age. Temporarily, jobseekers aged between 30 and 45 years are also eligible. The assistance consists of the reimbursement of the employer's share of social security contributions for a maximum period of one year.

Reference:

Loi du 24 juillet 2020 portant dérogation temporaire aux articles L. 524-1, L. 524-2, L. 524-5, L. 541-1 et L. 541-2 du Code du travail is available [here](#).

#### 1.1.2 Transportation conditions

Although there is a legal framework for social partners to negotiate national and interprofessional agreements on specific subjects, this tool is not very frequently used. Therefore, it might be worth mentioning that in the context of the COVID pandemic, an agreement was found between the crafts association (*Fédération des artisans*) and the two nationally representative trade unions (OGB-L and LCGB). In the crafts sector, the companies frequently organise the transport of the workers to the working/construction sites. The agreement introduces some safety measures, including a mandatory free seat in the back rows and the compulsory wearing of a face mask.

This agreement has been declared to be of general obligation by grand-ducal decree for all targeted employers. However, according to its Article IV and V, it seems that this declaration has been issued too late, as the agreement already ended (Article V) before it even entered into force (Article IV). In the reporter's opinion, a strict interpretation of these articles leads to the conclusion that the agreement thus never had any effect.

Reference: Règlement grand-ducal du 2 juillet 2020 portant déclaration d'obligation générale de l'accord interprofessionnel relatif au transport des salariés lors de l'état de crise déclaré dans le cadre du COVID-19 conclu entre la Fédération des artisans, d'une part et les syndicats LCGB et OGBL, d'autre part ([link](#)).

### 1.1.3 Occupational safety

As reported in Flash Report 4/20, due to the pandemic, specific safety regulations were put in place by a grand-ducal decree (2), using the specific powers granted to the government due to the constitutional state of emergency. As this state of emergency has come to an end, all of these decrees are no longer valid, and a series of laws has been voted on to extend the provisional measures (see Flash Report 6/2020). A specific bill (1) has been deposited (with a delay causing a period of inapplicability of safety rules) concerning the occupational safety rules. The proposed rules are exactly the same as those that were established by the grand-ducal decree, described in Flash Report 4/20 (Section 1.2.12.). These temporary measures are currently meant to end on 31 December 2020.

Sources:

Projet de loi n° 7635 portant introduction d'une série de mesures temporaires en matière de sécurité et santé au travail dans le cadre de la lutte contre le COVID-19 is available [here](#).

Règlement grand-ducal du 17 avril 2020 portant introduction d'une série de mesures en matière de sécurité et santé au travail dans le cadre de la lutte contre le COVID-19 is available [here](#).

## 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

In Luxembourg, cases of nullity or annulment of a dismissal are rare; most cases involve damages for unfair dismissal. So far, to the reporter's knowledge, no case law is available on the specific question decided by the Court of Justice.

Nevertheless, according to established case law in Luxembourg, in the event of annulment of the dismissal and reinstatement of a protected employee (e.g. a staff representative or a pregnant employee), the contract is deemed to never have ended. The employee is therefore entitled to his/her full salary from the date of dismissal (or, as the case may be, laid off (*mise à pied*)). There is no reason why a court would deny such an employee the right to leave or annual leave allowance.

## 4 Other Relevant Information

Nothing to report.



# Malta

## Summary

Nothing to report.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

On 30 July 2020, the [Posting of Workers in Malta \(Amendment\) Regulations, 2020](#), (Legal Notice 262/2020) (hereinafter “the Regulations”) came into force.

The object of these regulations is to give effect to the relevant provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services as amended by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018, and the provisions of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

“Article 7 (1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, concerning certain aspects of the organization of working time, must be interpreted as meaning that it is opposed to national case law according to which a worker unlawfully dismissed, then reinstated in his job, in accordance with national law, following the annulment of his dismissal by a judicial decision, is not entitled to paid annual leave for the period between the date of dismissal and the date of his reinstatement in his job, on the grounds that, during this period, this worker did not perform actual work in the service of the employer.”

“Article 7 (2) of Directive 2003/88 must be interpreted as precluding national case-law under which, in the event of the termination of an employment relationship occurring after the worker concerned has been unlawfully dismissed, then reinstated in his job, in accordance with national law, following the annulment of his dismissal by a court decision, this worker is not entitled to financial compensation for annual leave paid not used during the period between the date of the illegal dismissal and the date of his reinstatement in his job.”

Under Maltese Law, there is no law which states that such a period (between the date of the unfair dismissal and that of the reinstatement) should not be taken into account for the purposes of calculating annual leave allowance, but there is no law or, indeed,



no case law precluding it. Consequently, from now onwards, the courts, the enforcement authority (the Department of Industrial and Employment Relations) and industrial tribunal must also take this judgment into consideration.

#### **4 Other Relevant Information**

Nothing to report.

## Netherlands

### Summary

- (I) Economic support measures are still in place and continue to be widespread.
- (II) Food delivery couriers may not be under the age of 16 years.
- (III) The revised Posted Workers Directive has been implemented as of 30 July 2020.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Economic measures including measures aiming to preserve employment

##### Temporary Emergency Bridging Measure to preserve employment (NOW 2.0)

*Regulation by the Minister of Social Affairs and Employment dated 22 June 2020 establishing a second temporary subsidy scheme as a contribution towards wage costs to maintain jobs in exceptional circumstances, [Stcrt.2020, 34308](#).*

In the first week of NOW, 2.0 UWV has [received nearly 21,000 applications](#). Approximately 7,000 employers have received a first advance payment and the subsidy has covered nearly 400,000 employees.

UWV has furthermore published a [register](#) of employers that have applied for NOW 1.0. By publishing the names of the employers, the government aims to be as transparent as possible about the use of public funding to support companies.

##### Temporary Bridging measure for Flex Workers (TOFA)

*Regulation by the Minister of Social Affairs and Employment dated 8 June 2020 establishing a temporary bridging measure for Flex Workers, [Stcrt. 2020, 31395](#).*

The scheme ended on 27 July 2020. UWV (the Dutch Public Employment Service that implements the scheme) indicated that approximately 23,000 applications had been received. A little over 50 per cent of applications were rejected because one or more of the conditions were not fulfilled.

##### 'NL Leert Door'- subsidy scheme for training

One of the additional conditions added to the NOW 2.0 subsidy scheme is that employers who receive the NOW subsidy are required to stimulate their employees to take retraining or reskilling courses. To support this obligation, the government has launched flanking measures called 'NL Leert Door' ('*Netherlands continues to educate*') with a 50 million EUR budget. The purpose of this package is to facilitate a reorientation on the labour market for workers who have suffered economic effects of the COVID-19 crisis. The package will consist of two subsidy schemes. The first one, which will likely be published in August 2020, aims to provide career development advice to those workers who consider or have to consider a career switch, taking into account the needs of and possibilities in the labour market. The second scheme will take more time to develop and will be available in the fourth quarter of 2020 and will focus on online or blended learning to retrain or provide additional training for workers. Both schemes are expected to be open for all workers, including flex-workers, self-employed workers and independent entrepreneurs.

## 1.2 Other legislative developments

### 1.2.1 Food delivery couriers may not be under the age of 16

In the Netherlands, a public debate has focussed on young food delivery couriers aged 14 or 15 years old. The existing legislation on child labour ([Nadere Regeling Kinderarbeid](#), based on the Dutch Working Time Act) allows children under the age of 16 years to perform certain activities under very strict conditions. For 13 and 14 year old children, these activities should always be under the direct supervision of an adult, so it is clear that food delivery is prohibited for these age groups. For 15 year old children, the regulation left some room for debate on whether the work as a food delivery courier is possible or not.

As of 1 July 2020, the Further Regulation on Child Labour has been amended (the [Regulation](#) of the Secretary of State of Social Affairs and Employment of 22 June 2020, No. 2020-0000084813, amending the Further Regulation on Child Labour with respect to commercial food delivery by children). It now explicitly states that this type of work brings along an unacceptable safety risk and is therefore prohibited for children under the age of 16. The main reason is that food couriers have to deliver the meals under time pressure, confronted with traffic, etc.

The prohibition entered into force on 1 July 2020, no transition period has been provided.

The amendment relates to child labour and platform work.

There is broad consensus on this measure and seems to have only minor implications for the Netherlands and no implications for the EU acquis.

### 1.2.2 Implementation of the revised Posted Workers Directive (2018/957)

With the Act Implementing the Revised Posted Workers Directive of 1 July 2020 ([Stbl. 2020, 249](#)) entering into force on 30 July 2020 ([Stbl. 2020, 250](#)), the Netherlands complies with the implementation paragraph in Directive 2018/957.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

These joined Bulgarian and Italian cases concern the payment of holiday leave after an unlawful dismissal. The questions arose whether 1) an employee who has been wrongfully dismissed and subsequently resumes his/her work is entitled to annual paid leave for the period from the date of dismissal until the resumption of work, and 2) whether the employee has a right to financial compensation for unused annual leave within that period.

According to the wording of Article 7 (1) of Directive 2003/88/EC, all workers are granted paid annual leave of at least four weeks per year. The CJEU stressed that his entitlement to paid annual leave should be regarded as a particularly crucial principle of EU law, which the competent national authorities may only implement within the limits expressly provided for in Directive 2003/88/EC. While it is for the Member States to lay down the conditions for the exercise and enforcement of the right to paid annual leave,

they should not make the creation of that right directly resulting from the Directive subject to any condition.

In certain specific situations where the worker is unable to perform his/her duties, it may not be a condition for the right to paid annual leave that work has actually been performed. An example of this is sick leave. The CJEU notes that the fact that an employee is unable to work as a result of a dismissal is considered to be unforeseeable and occurs outside the employee's control, as does incapacity for work due to illness. After all, without the wrongful dismissal by the employer, the employee would have been able to work and use his/her right to annual leave during that period. Under these circumstances, protection of the interests of the employer does not appear to be strictly necessary and cannot therefore a priori justify a derogation from the employee's right to paid annual leave. A different situation arises if the employee in question was employed by another employer between the wrongful dismissal and the reinstatement. In that case, he/she cannot assert annual holiday rights with regard to his/her first employer for the period in which he/she worked for another employer and must assert his/her right to annual paid leave for that period in respect of his/her new employer.

With regard to Article 7 (2) of Directive 2003/88/EC, the CJEU emphasised that it does not impose any condition on entitlement to financial compensation other than that the employment is terminated and that the worker has not taken all of the annual leave to which he/she was entitled upon termination of that employment relationship. Therefore, if the employee is dismissed again (as in these cases) after reinstatement, under Article 7 (2) of Directive 2003/88/EC the employee may claim compensation for the annual leave not taken, including the holiday for the period between the wrongful dismissal and reinstatement (unless he/she was working for another employer during that time).

In conclusion, the CJEU ruled that Article 7 (1) of Directive 2003/88/EC must be interpreted as precluding national case law according to which an employee who has been unlawfully dismissed and later resumed employment is not entitled to paid annual leave for the period between dismissal and his/her reinstatement on the ground that that employee did not perform any actual work for the employer during this period. Article 7 (2) of this Directive precludes national case law according to which, following wrongful dismissal and a subsequent reinstatement, an employee is not entitled to financial compensation for unused annual leave with pay for the period between the wrongful dismissal and his/her reinstatement.

Although Dutch legislation (Article 7:634 Dutch Civil Code) is formulated differently from the relevant provisions in the Directive, it is in conformity with the Directive and the CJEU's ruling. The main rule under Dutch law is that there is a right to annual leave if the employee is entitled to wages. This means that under Dutch law, an employee is entitled to annual leave in the period between wrongful dismissal and the resumption of his/her tasks. After all, due to the annulment of the dismissal, the employee is deemed to have always remained in service, which means that he/she has a right to wages during this period (Article 7:628 Dutch Civil Code), and is thus entitled to annual leave. In some specific situations under Dutch law, a wrongful dismissal that is under debate in appeal may lead to the reinstatement of the employment contract (instead of annulment of the dismissal), but later than the date of the wrongful termination, for instance, if the employee had another job during that period. During the 'gap' there is no entitlement to wage and therefore, no right to annual leave. However, an appeal court is allowed to strike provisions for that 'gap' period and it seems that accruing holidays can be part of these provisions.

No attention has been given to this ruling in academic literature, nor in public debate. One case note has been published, stating that this ruling can be seen as a confirmation that Dutch legislation is in conformity with EU law.

## 4 Other Relevant Information

### 4.1 Recommendation migrant workers

COVID-19 outbreaks in the meat processing industry which employs many migrant workers have led to the establishment of a 'task force protection migrant workers'. The first recommendations have been [forwarded to Parliament](#). The task force has concluded that the vulnerability of migrant workers in relation to the COVID-19 virus is mainly due to the fact that they live, commute and work closely together. Furthermore, they often depend on their employer or intermediary not only for work, but also for housing, healthcare and transportation. The recommendations of the task force evolve around seven topics: registration living, transportation, work, healthcare, cooperation between enforcement authorities, and information provision. The recommendations are rather practical and aim at short-term solutions (such as alternative options for transportation, e.g. e-bikes or larger busses). Other recommendations have a more structural aim such as making it more difficult to establish a temporary work agency by introducing compulsory adherence to a sector organisation, licences or quality marks. Further recommendations will follow, as will the response of the government.

### 4.2 Evaluation first quarter WAB (Balanced Labour Market Act)

As of 1 January 2020, the WAB has been applicable, amending dismissal law and aiming to strengthen the position of flexible workers (see FR February 2020 for the most relevant changes). At the request of Parliament, a quick review has been conducted of the first quarter following implementation. The results were sent to Parliament by the Minister of Social Affairs and Employment by [letter of 5 June 2020](#). The main conclusion with respect to flexible work was that the COVID-19 outbreak and the subsequent government measures make it impossible to say anything about the labour market effects of the WAB in the first quarter. Some small amendments of the Act have, however, been announced based on signals from the public debate and social partners.

### 4.3 Memo on the simplification and extension of leave

On 6 July 2020, the Minister of Social Affairs informed Parliament on the progress made on the reformed system of child care provisions. As an annex, a [memo](#) was published describing the different types of leave that are relevant around childbirth and leave used to care for the sick and needy. The memo provides an overview of several policy options that may be used to simplify and extend the current legislation on leave and can be used as a basis for exploring future possibilities.

### 4.4 Update on social security contributions and A1-statements

On 7 July 2020, an [update](#) was published on social security contributions in the light of Regulation 883/2004 and Regulation 987/2009. In this update, the Minister of Social Affairs and Employment informed Parliament about the A1-statement, which is used by employees (and their employers) to prove in which Member State they need to pay social security contributions. Abuse of these A1-statements may arise with the goal of cutting costs. In that case, social security contributions are paid (on purpose) in a Member State where these contributions are low. In the update, the Minister explained his views on counteracting abuse of A1-statements and the role of these considerations in the discussion with the EU about revising EU legislation on this topic.



# Norway

## Summary

Norway has limited the COVID-19 outbreak and the lockdown measures are gradually being lifted. In July, there was only some minor modifications of the existing measures.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Norwegian society was partially locked down by the government on 12 March 2020 due to the COVID-19 outbreak. A number of measures were introduced to prevent the virus from spreading and to mitigate the effects of the pandemic on society. See Flash Report 5/2020 for a description of the relevant legislative measures.

The gradual reopening of society, which started in April, continued in June. Amusement parks were allowed to reopen on 1 June, fitness studios and swimming pools on 15 June, and at present, virtually all business activities have reopened. From 15 June, it is permitted to have events for up to 200 people with a requirement to distance of at least 1 metre between all participants, with some exceptions. Travel and quarantine restrictions were also lifted to some extent. Strict infection control measures still apply.

The unemployment rate rose sharply during the lockdown, but has been declining since the reopening started. By the end of May, there were approx. 355 400 unemployed persons, amounting to 12.6 per cent of the workforce. By the end of June, the number was 272 400, i.e. 9.6 per cent of the workforce.

In June, the government passed several regulations to continue and/or adapt existing measures to the COVID-19 outbreak, most importantly:

- The employer's duty to pay employee's salaries during a layoff period was reduced from 15 to 2 days in March. In June, it was **decided** to increase the number of days to 10 from 1 September onwards.
- On 23 June, a new temporary scheme for subsidies to employers who requested workers that had been laid off during the lockdown to return to work was **introduced**. The scheme applies to employees who were laid off after 28 May 2020 and who returned to work before 1 July or 1 August 2020.
- Temporary **regulations** on parental leave have been modified. From 1 July, the number of days of parental leave was changed back to the usual number of days in accordance with the National Insurance Act. This implies that an employee for the rest of 2020 will be entitled to the same number of leave days (as a main rule, 10 days) he/ she would normally be entitled to each year pursuant to the Act.
- Temporary regulations on advanced payments of unemployment benefits were continued and **adapted**.

### 1.2 Other legislative developments

Nothing to report.



## 2 Court Rulings

Nothing to report.

## 2 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The ruling concerned the interpretation of Directive 2003/88/EF and the Charter of Fundamental Rights of the European Union Article 31 (2). The factual circumstances of the two cases were similar. QH was an employee of a school in Bulgaria. She was dismissed and then reinstated after the dismissal was found to have been unlawful and was later dismissed again. Similarly, CV was dismissed from her post at an Italian credit institution and reinstated after the dismissal was annulled because it was deemed unlawful. Subsequently, her employment relationship was terminated. Both claimed payment of compensation in lieu of leave not taken for the period between the unlawful dismissal and the reinstatement.

The cases raised the issue whether EU law must be interpreted as meaning that a worker's entitlement to paid annual leave is accrued for the period between an unlawful dismissal and reinstatement, even if the worker has not performed work for the employer in this period.

The CJEU held that the right to paid annual leave is, in principle, determined by periods of actual work according to the employment contract. However, it follows from previous case law that the right to paid annual leave cannot be conditional on actual work if the worker is unable to perform work for an unforeseeable reason beyond his or her control, such as sickness. A worker who is deprived of the opportunity to work as a result of a dismissal subsequently found unlawful, is also unable to work for a reason that is in principle unforeseeable and beyond the worker's control.

The CJEU therefore found that for the purposes of determining the entitlement to paid annual leave, the period between an unlawful dismissal and reinstatement must be assimilated to a period of actual work. As a result, the worker is entitled to acquire paid annual leave for this period, and if the employment ceases after reinstatement, the worker is entitled to payment in lieu of paid annual leave not taken. The CJEU further added that if a worker has found new employment in this period, he/she is only able to claim the entitlement corresponding to the period in that employment from the new employer.

Generally, situations in which a worker is dismissed and subsequently reinstated once the dismissal is found to have been unlawful are not widespread in Norway. An employee who is dismissed with notice is—as a general rule—entitled to remain in his or her position during legal proceedings concerning the lawfulness of his/her dismissal, cf. the [Working Environment Act § 15-11](#). The right does not apply to i.a. employees who are dismissed without notice according to [§ 15-14](#) in the same Act or to employees in fixed-term employment who claim they are working in a permanent employment relationship.

The issue raised in the ruling has not yet been addressed by legislators or courts in Norway. There are no regulations or known case law conflicting with the ruling.

The right to paid annual leave in Directive 2003/88/EF is implemented in the [Norwegian Holiday Act](#). The Act regulates the right to annual leave (*feriefritid*) separate from the related right to holiday pay (*feriepenger*).

As concerns the right to leave, it is the duty of the employer to ensure that employees take 25 working days of annual leave, cf. [§ 5](#). Leave not taken during the holiday year,



is transferred to the following holiday year, regardless of the reason why the leave was not taken, cf. [§ 7 \(3\)](#). An employee who has not taken leave as a result of an unlawful dismissal, will therefore be entitled to take the leave the following year.

As concerns the right to the related pay, this is calculated based on wages (*arbeitsvederlag*), cf. [§ 10](#). The concept of ‘wages’ in this context is interpreted rather broadly, and only some specific payments are explicitly excluded. There has been some discussion—and somewhat diverging views—in doctrinal works on the more detailed interpretation of ‘wages’. The ruling will now provide a basis for an interpretation that includes compensation for wages in the period from the unlawful dismissal to the reinstatement.

#### 4 Other Relevant Information

Nothing to report.

# Poland

## Summary

- (I) The law implementing Directive 2018/957 has been enacted, but it has not yet taken effect.
- (II) The binding force of anti-crisis provisions on remote working has been extended.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Remote work

The law on the amendment of the Law on the Posting of Workers within the framework of freedom to provide services and some other statutes (see previous section) has also amended the provisions of the “anti-crisis shield” which relate to remote working.

The anti-crisis shield, i.e. the Law of 2 March 2020 on specific measures to prevent, counteract and fight COVID-19, other infectious diseases and crisis situations caused by them (Ustawa o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych), Journal of Laws 2020, item 374, as amended is available [here](#).

Article 3 of the anti-crisis shield provides that in order to counteract COVID-19, the employer may request employees to perform the work agreed in the employment contract outside the usual workplace for a limited time. According to the initial version, this regulation was to remain in force for 180 days after the Law took effect, i.e. until 4 September 2020.

According to the amendment of 24 July, remote working can be ordered by the employer within the period of a pandemic or an epidemic situation, which was announced due to COVID-19, and for three months after these crisis situations have been revoked. The rules of remote work performance have not been modified

The remote working provisions have been analysed in Flash Reports 3/2020 (section 1) and 6/2020 (section 1).

There is no link between the posting of workers and remote working at all. Including remote working provisions in the draft to amend provisions on the posting of workers can only be justified by a willingness to complete the legislative process within a short period of time.

The amendment did not modify the rules of remote work performance, but only extended the binding force of Art. 3 of the anti-crisis law. This development should be evaluated positively. Remote working is widely used in practice, and this option should continue to be available.

The major aim of the anti-crisis provisions on remote working is to contain the COVID-19 pandemic. In the reporter’s view, it can be expected that the provisions on remote working will be integrated into the Labour Code in the future and will become a new “regular” institution of labour law.

## 1.2 Other legislative developments

### 1.2.1 Posting of workers

On 24 July, the law on the amendment of the Law on the Posting of Workers within the framework of the freedom to provide services and amendments to several other laws was enacted by the Sejm (the lower chamber of Parliament). The aim of the Law is to implement Directive 2018/957.

The original Law of 10 June 2016 on the posting of workers within the framework of the provision of services (consolidated text Journal of Laws 2018, item 2206) is available [here](#).

The draft intends to implement Directive 2018/957 on the posting of workers. The draft and its substantiation is available [here](#).

The information on the legislative process is available [here](#).

The draft has been introduced and analysed in Flash Report Poland 6/2020, section 1.II (posting of workers).

It should be noted that the legislative process has not yet been completed. The Law must be forwarded to the Senate (the higher chamber of Parliament), and then signed by the President. The Law will take effect 14 days after its promulgation.

As the legislative process is still underway, Poland has not implemented Directive 2018/957 on time. In the reporter's view, this will, however, happen soon. It seems that the draft correctly implements Directive 2018/957 (see analysis in FR Poland 6/2020).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

In Poland, the employee has the right to annual holiday leave (Art. 152 of the Labour Code). Employees can receive an allowance in lieu instead of free time only in case of termination or expiry of the employment contract (Art. 171 LC).

In case of termination of an employment contract with notice, the employment contract ends on the date the period of notice expires, even if the employer did not provide a reason for the termination of the open-ended contract, or has violated procedural provisions. The employee can appeal against the termination at the labour court (Art. 44 LC).

In case of termination of an open-ended contract, the employee can demand reinstatement of the contract, or financial compensation (Art. 45 LC). If the court rules in favour of reinstatement, the employee needs to continue to perform his/her duties, and has the right to remuneration for the period he/she was out of work. The amount of remuneration is limited to 1 or 2 months of remuneration (depending on the length of the period of notice). Several categories of employees (e.g. pregnant employees or trade union representatives) have the right to remuneration for the entire period during which they are not working (Art. 47 LC).

Article 51 LC provides that if an employee returns to work as a result of reinstatement, the period of being out of work and for which the employee was remunerated, is included



in that employee's employment period. A period of being out of work for which an employee was not remunerated is not regarded as an interruption of his/her employment resulting in the loss of rights depending on his/her continued seniority.

The Labour Code of 26 June 1974 (consolidated text: Journal of Laws 2020, item 1320) is available [here](#).

Thus, the court rulings on reinstatement has *ex nunc* effect, i.e. it does not nullify the unlawful termination, but restores the employment relationship for the future. The time between the termination and reinstatement is not considered an employment period, and during this period, an individual cannot obtain any employee rights. Consequently, for the period between the termination and the reinstatement, the employee does not have the right to the annual leave or an allowance in lieu.

#### 4 Other Relevant Information

Nothing to report.

## Portugal

### Summary

- (i) An ordinance regulates extraordinary incentives for companies to normalise their activity;
- (ii) a decree law creates support for the progressive resumption of companies' activity;
- (iii) a Resolution of the Council of Ministers maintains the three states (emergency, contingency and alert) applicable to different areas of the Portuguese territory; another Resolution of the Council of Ministers No. 55-A/2020, of 31 July puts an end to the state of emergency;
- (v) a decree law regulates incentives for employees to change their workplace to territories with low population densities; an ordinance aims to encourage geographic mobility in the employment market.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Incentive for companies to normalise their activity

**Ordinance** No. 170-A/2020 of 13 July 2020 regulates the procedures, conditions and terms of access to the extraordinary incentive for companies to normalise their activity ("*incentivo extraordinário à normalização da actividade empresarial*") set forth in Decree Law No. 27-B/2020, of 19 June (see Flash Report of June 2020) to be provided by the Institute of Employment and Professional Training (*Instituto de Emprego e Formação Profissional* – IEFP).

This financial incentive aims to support the retention of employment and to reduce the risk of unemployment among employees hired by companies facing a business crisis as a result of the COVID-19 pandemic.

Companies that have benefited from the extraordinary support to the retention of employment (simplified lay-offs) or extraordinary training plans envisaged in Decree Law No. 10-G/2020, of 26 March (see reference to these measures in the Flash Report of March 2020) are eligible—after the end of such measures—for this financial assistance to normalise the businesses activity under one of the following options:

- (i) One-off payment, corresponding to an amount equivalent to one national minimum wage (i.e. EUR 635.00) per employee covered by the measures mentioned above; or
- (ii) Financial support in an amount corresponding to two national minimum wages (i.e. EUR 1,270.00) per employee covered by the measures mentioned above, paid in instalments over 6 months. In this case, the employers are also entitled to a 50 per cent reduction of the social security contributions borne by them in relation to employees covered by the above referred measures. Furthermore, in case of net job creation through the hiring of employees under permanent employment contracts within 3 months after the end of this incentive, the employers are entitled to a total exemption from the payment of social security contributions related to such employees for a period of 2 months.

Employers that benefit from this financial support may not terminate contracts of employment by collective dismissal, by dismissal due to redundancy or due to employee



inadequacy for 60 days. Furthermore, during the period of application of this measure, the employers should be in good standing with the tax and social security authorities. Non-compliance with the above referred duties entails immediate termination of this support and the obligation to refund any benefits granted.

Employers that benefit from this measure cannot have access to the progressive resumption support referred to below.

This ordinance entered into force on 14 July 2020.

### 1.1.2 Support for the progressive resumption of business activity

**Decree Law** No. 46-A/2020, of 30 July—within the scope of the Economic and Social Stabilisation Programme (see reference to this Programme in the Flash Report of June 2020)—creates extraordinary support for the progressive resumption (“*apoio extraordinário à retoma progressiva*”) of the business activity of companies that have been affected by the COVID-19 pandemic and that are currently facing a business crisis, aiming to retain job positions.

For this purpose, a business crisis is considered to be one in which there is a drop in the company’s turnover of at least 40 per cent in the full calendar month immediately preceding the month to which the initial request for this support or its extension refers, compared to the same month of the previous year or to the monthly average of the two months prior to that period or, in case of companies that have initiated their activity less than 12 months ago, compared to the average monthly turnover between the beginning of the activity and the penultimate full month preceding the calendar month to which the initial request for this support or its extension refers.

The companies that fulfil the conditions described above may benefit from this extraordinary support for the progressive resumption of business activity, allowing them to temporarily reduce the normal period of work of all or some of their employees.

To implement this measure, the employer shall inform the affected employees in writing about the percentage of the reduction of their working hours and the expected duration of the measure after consulting the works council and the union delegates, if they exist (the employer may determine a deadline of at least 3 business days for them to issue their opinion).

The reduction of working hours shall apply for one calendar month, applicable as of 1 August 2020, and may be extended monthly until 31 December 2020. It should be noted that this reduction in working hours may be applied in interpolated months between 1 August and 31 December 2020.

The measure to reduce the employee’s normal working hours is subject to certain limits, depending on the decrease of the company’s turnover. If such a decrease does not exceed 59 per cent (although it is equal or higher than 40 per cent), the reduction of working hours of each employee may be a maximum, of *i*) 50 per cent in August and September 2020, and *ii*) 40 per cent in October, November and December 2020. If the decrease of the company’s turnover is equal or higher than 60 per cent, the reduction of working hours of each employee may be a maximum, of *i*) 70 per cent in August and September 2020, and *ii*) 60 per cent in October, November and December 2020.

During the period of reduction, the employees are entitled to receive (*a*) remuneration corresponding to the hours of work provided, and (*b*) retributive compensation in the amount of *i*) 2/3 of their gross regular remuneration corresponding to the hours not worked in August and September 2020, or *ii*) 4/5 of their regular gross remuneration corresponding to the hours not worked in October, November and December 2020, in both cases subject to the maximum limit of three national minimum wages (EUR 1,905).



The employees covered by this measure are entitled to receive at least one national minimum wage (EUR 635).

Employers covered by this measure are entitled to receive financial support from the social security authorities exclusively for the payment of the retributive compensation. Such support corresponds to 70 per cent of the retributive compensation due to employees.

This Decree Law establishes additional support applicable to cases in which the company's turnover registers a drop of 75 per cent or more. Such additional support—which is also paid by social security—corresponds to 35 per cent of the gross normal remuneration for the hours worked by employees affected by the measure of reduction of the working period. The sum of this additional support and the above referred support corresponding to 70 per cent of the retributive compensation may not exceed three national minimum wages (EUR 1,905).

The employers covered by the financial support set forth in this Decree Law may also be entitled to the following benefits:

- (a) In August and September 2020, *i)* companies with less than 250 employees may be fully exempt from paying social security contributions for the employees affected by the measure of reduction of working hours, and *ii)* for companies with 250 or more employees, the benefit corresponds to a 50 per cent exemption from paying social security contributions;
- (b) In October, November and December 2020, companies with fewer than 250 employees may benefit from a 50 per cent exemption from paying social security contributions.

Companies that benefit from financial support measures created by this Decree Law are subject to a number of obligations.

During the period of reduced working hours, employers must comply with the duties arising from the employment contract, the law and the collective bargaining agreement. They are furthermore required to *i)* be in good standing with the tax authorities and social security; *ii)* pay the retributive compensation due to employees in a timely manner; *iii)* pay social security contributions for employees' remuneration in a timely manner; *iv)* refrain from increasing remuneration or other benefits granted to the members of the corporate bodies.

Furthermore, during the period of reduced working hours and for 60 days after the end of this measure, employers are prohibited from *(i)* terminating contracts of employment by collective dismissal, dismissals for redundancy and dismissals due to employee inadequacy as well as initiating such procedures, and *(ii)* profit distribution.

Failure to comply with the obligations referred to above implies immediate termination of the financial support set forth in Decree Law No. 46-A/2020 and the refund or payment, in full or proportionally, of the amounts already received or exempted.

The financial support established in this Decree Law is not cumulative with the financial support set forth in Decree Law No. 10-G/2020, of 26 March (see the Flash Report of March 2020), namely simplified lay-off, and with the extraordinary incentive to normalise business activity ("*incentivo extraordinário à normalização da actividade empresarial*") set forth in Decree Law No. 27-B/2020, of 19 June and regulated by Ordinance No. 170-A/2020, of 13 July, referred to above.

This Decree Law entered into force on 31 July 2020.

### 1.1.3 Development of the state of emergency, contingency and alert

Resolution No. 53-A/2020, of the Council of Ministers, of 14 July, amended by Rectification No. 25-A/2020, of 15 July, maintains the (i) state of emergency in certain districts of the Lisbon Metropolitan Area, (ii) state of contingency in the Lisbon Metropolitan Area, except in the above mentioned districts, and (iii) state of alert to the remaining territory until 31 July 2020. In general, the exceptional measures defined by the Resolution of the Council of Ministers No. 51-A/2020, of 26 June (see reference to this resolution in the Flash Report of June 2020) for each one of the above referred states remain in force. This provision became effective on 15 July 2020.

Resolution No. 55-A/2020, of the Council of Ministers, of 31 July, declares that (i) the state of contingency for the entire Lisbon Metropolitan Area, and (ii) the state of alert for the remaining territory applies until 14 August 2020.

This Resolution establishes exceptional and temporary measures of response to the pandemic to be applied during this period in the context of the states of contingency and alert, such as:

- a) restricting access, movement and stays of people in public spaces and keeping the number of people to a maximum of 20 or 10 people, depending on whether the situation declared in that place is one of alert or contingency, respectively;
- b) limitation of certain economic activities;
- c) definition of operating rules for industrial, commercial and service establishments, namely limitations to the opening hours of commercial and service establishments in the Lisbon Metropolitan Area;
- d) concerning teleworking, the following measures are established:
  - (i) the employer must ensure health and safety conditions of work to prevent the risk of contagion arising from the COVID-19 pandemic;
  - (ii) the teleworking regime remains mandatory in situations defined in the Resolution of the Council of Ministers No. 51-A/2020, of 26 June. In the other cases, the teleworking regime may be adopted under the terms defined in the Labour Code (which requires an agreement between the employer and the employee).

## 1.2 Other legislative developments

### 1.2.1 Mobility incentives

Decree Law No. 40/2020, of 17 July 2020 (a summary in English (without legal value) is available [here](#)) establishes incentives for public sector employees who are integrated in general careers, in case of changes to their workplace to territories with a low population density (either in the context of a mobility scheme or teleworking). This measure aims to promote the mobility of such employees to less populated regions to contribute to better balance the country territorially. Such incentives may be of a pecuniary or non-pecuniary nature.

This law entered into force on 18 July 2020.

Ordinance No. 174/2020, of 17 July 2020, establishes the measure "*Emprego Interior MAIS – Mobilidade Apoiada para um Interior Sustentável*", with the objective of encouraging geographic mobility in the labour market.

This measure consists of the provision of financial support by the Institute of Employment and Professional Training ("*Instituto de Emprego e Formação Profissional*" – IEFP) for employees who enter into employment contracts or create their own job or

business, whose workplace implies geographical mobility to interior regions. Unemployed people and employees looking for a new job are eligible for this measure.

This law entered into force on 18 July 2020.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

This recent CJEU ruling issued in [Joined Cases C-762/18 and C-37/19](#) concerns the interpretation, in particular, of Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, which regulates certain aspects of the organisation of working time.

The referred provision envisages that (i) the Member States shall take the measures necessary to ensure that all employees are entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave established by national legislation and/or practice [Article 7 (1)] and (ii) the minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated [Article 7 (2)].

In these two cases, the employees had been unlawfully dismissed. Such dismissals were subsequently held to be illegal by the national courts, and the employees were reinstated in their job position. They were subsequently dismissed again. The employees claimed compensation for paid annual leave not taken during the period between the date of their dismissal and their reinstatement.

In this judgment, the CJEU assessed whether:

- (a) Article 7 (1) of Directive 2003/88/EC should be interpreted as precluding national legislation or case law according to which an employee who was unlawfully dismissed and subsequently reinstated in the respective job position due to a judicial decision is not entitled to paid annual leave related to the period between the dismissal date and the reinstatement date;
- (b) Article 7 (2) of Directive 2003/88/EC should be interpreted as precluding national legislation or case law according to which, if the employment relationship is again terminated, the employee is not entitled to financial compensation for the paid annual leave not taken between the date of dismissal and the reinstatement.

Regarding the first question, the CJEU stated that the right to annual leave enshrined in Article 7 of Directive 2003/88/EC has a dual purpose, because it aims to allow the employee to have i) a period of rest in connection with the performance of functions in accordance with his/her employment contract, and ii) a period of relaxation and leisure. These purposes are based on the premise that the employee has performed his/her functions during the reference period. Therefore, as a rule, the right to paid annual leave should be determined according to the periods of effective work completed under the terms of the employment contract. However, the CJEU admits that in certain specific situations in which the employee is unable to perform his/her activity, the right to paid annual leave cannot be subject to the obligation of having provided effective work. Thus, Directive 2003/88/EC does not allow Member States to exclude the constitution of the right to paid annual leave nor to provide that such a right is extinguished at the end of



a reference period in case the employee has been prevented from exercising such a right, as is the case when taking sick leave.

In both cases C-762/18 and C-37/18, the employees had been unlawfully dismissed and as a result of a judicial decision, reinstated in their job position. Due to an unlawful act of the employer, these employees were unable to perform their work between the date of dismissal and reinstatement and consequently, they could not exercise their right to paid annual leave during that period.

According to the CJEU, an employee who was unlawfully dismissed and subsequently reinstated in his/her job position as a result of a judicial decision, is entitled to claim the exercise of his/her right to paid annual leave during the period between the dismissal and the date of reinstatement.

Regarding the second question, the CJEU explained that Article 7 (2) of Directive 2003/88/EC does not stipulate any conditions for acquiring the right to financial compensation other than, on the one hand, the termination of the employment relationship and, on the other hand, the fact that the employee did not take all of the annual leave to which he/she was entitled on the date of the termination. Therefore, according to the CJEU's ruling, such provision should be interpreted as precluding national laws or practices according to which on the date of the termination of the employment contract, no financial remuneration for unused annual leave is paid to the employee who was unable to take such annual leave before his/her employment contract was terminated, namely due to sick leave.

Consequently, in this judgment, the CJEU ruled that:

Article 7 (1) of Directive 2003/88/EC must be interpreted in the sense that it precludes national case law according to which an employee who has been unlawfully dismissed and subsequently reinstated in accordance with national law, following the annulment of his/her dismissal by a court decision, is not entitled to paid annual leave in the period between the date of dismissal and the date of reinstatement in his/her job position, due to the fact that during this period, the aforementioned employee did not perform effective work at the employer's service.

Article 7 (2) of Directive 2003/88/EC must be interpreted as precluding national case law according to which in the event of the termination of an employment relationship after the employee was illegally dismissed and subsequently reinstated in his/her job position, the employee is not entitled to financial remuneration for paid annual leave not taken during the period between the date of the unlawful dismissal and the date of reinstatement.

Under Portuguese labour law, if a termination is considered to have been unlawful, the employee is entitled to *i)* compensation for all pecuniary or non-pecuniary damages arising from the unlawful dismissal, and *ii)* may choose between reinstatement in his/her former job position in the company or compensation for dismissal (Article 389 (1) of Portuguese Labour Code).

As regards the compensation for damages referred to above in *i)*, the employee is entitled to at least the remuneration he/she would have received between the date of dismissal (or the period starting 30 days prior to the date on which the employee initiated the lawsuit to challenge the dismissal, if it was initiated more than 30 days after the termination) and the date of the final court decision asserting that the dismissal was unlawful (Article 390 of Portuguese Labour Code).

Furthermore, pursuant to Article 245 (1) of Portuguese Labour Code, in case of termination of the employment contract, the employee is entitled to receive remuneration for annual leave days not taken at the time of the termination.



Based on the above referred rules, the employee does not lose the right to paid annual leave he/she was unable to take due to unlawful dismissal. If the employee is reinstated in his/her job position, such annual leave period may be taken after the reinstatement (as decided, for instance, in the ruling of the Lisbon Appeal Court of 23 October 2019 (available [here](#))). In case the employee chooses compensation instead of reinstatement, he/she has the right to payment of compensation for unused annual leave corresponding to the period between the dismissal and the final decision of the court based on the terms referred to above. Hence, Portuguese labour law is in line with the CJEU's ruling issued in joined cases C-762/18 and C-37/19.

#### **4 Other Relevant Information**

Nothing to report.

# Romania

## Summary

(I) The state of emergency has been extended. Workers whose work has been suspended receive financial support.

(II) The Labour Code has been amended to include rules on the prohibition of discrimination within employment relationships.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 New financial support for suspended employees

The state of emergency has been extended by Government Decision No. 553/2020 on the extension of the state of emergency on the Romanian territory starting on 17 July 2020, as well as the establishment of measures that will be applied during the state of emergency to prevent and contain the effects of the COVID-19 pandemic (published in the Official Gazette No. 627 of 16 July 2020).

Certain categories of employees who are no longer working as a result of the pandemic receive an indemnity of 75 per cent of their salary, paid from the unemployment insurance budget, but not more than 75 per cent of the national average gross wage (see Flash Report No. 3/2020 and No. 4/2020).

Emergency Ordinance No. 120/2020 on the establishment of support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus (published in the Official Gazette No. 658 of 24 July 2020) extends this right to compensation paid from the unemployment insurance budget, providing it to employees in companies as well whose activity has been suspended as a result of the epidemiological investigation carried out by the county public health directorates.

### 1.2 Other legislative developments

#### 1.2.1 Prohibition of discrimination

The Labour Code has been amended by Law No. 151/2020 to amend and complete Law No. 53/2003 – Labour Code (published in the Official Gazette No. 658 of 24 July 2020), introducing a series of norms on the prohibition of discrimination in labour relationships. Thus, the criteria to which any act of discrimination is prohibited have been expanded, adding the following criteria: language, chronic non-communicable disease, HIV infection and belonging to a disadvantaged category.

Rules on objective justification related to indirect discrimination, the prohibition of victimisation and harassment have also been introduced in the Labour Code. Such rules are not new; they were previously part of the general legislation for protection against discrimination (included in Government Ordinance No. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished in the Official Gazette No. 166 of 7 March 2014 and Law No. 202/2002 on equal opportunities and treatment between women and men, republished in the Official Gazette No. 326 of 5 June 2013).

Yet the concept of discrimination by association has been defined for the first time in Romanian legislation, namely by Art. 5 (6) of the Labour Code as “any deed or act of discrimination committed against a person who, although not part of a category of





persons identified according to the protected criteria, is associated or presumed to be associated with one or more persons belonging to such a category of persons”.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The Court of Justice of the European Union has ruled on the right of a worker to paid annual leave who has been reinstated in his or her post based on a court decision.

According to Art. 144 of the Labour Code, the right to rest is guaranteed to all employees and cannot be the subject of any waiver, transfer or limitation. As a result, Romanian courts resolve cases in which the issue of reinstatement of the employee is raised by granting all the rights they would have otherwise benefited from, if the employment contract has not ended. It is the direct effect of the nullity of the dismissal decision, a decision which, by the ruling of the labour court, is considered to have never existed.

Romanian case law is already in line with the interpretation given for Article 7 paragraph (1) of Directive 2003/88 in cases C-762/18 and C-37/19, in the sense that a worker who is unlawfully dismissed and then reinstated by a court decision, may claim all the rights to paid annual leave acquired in the period between the date of the unlawful dismissal and that of his/her reinstatement.

## 4 Other Relevant Information

Nothing to report.



# Slovakia

## Summary

Important government decrees and resolutions have been adopted in relation to COVID-19.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Unemployment benefits

The Decree of the Government of the Slovak Republic No. 186/2020 Coll. amending the Decree of the Government of the Slovak Republic No. 101/2020 Coll. on the extension of the unemployment benefit period for the duration of the extraordinary situation, state of emergency or exceptional state declared in connection with COVID-19, as amended by the Government Decree of the Slovak Republic No. 137/2020 Coll. extends the unemployment benefit period.

The Decree of the government is amended as follows:

1. In Article 1, a new paragraph 3 is inserted after paragraph 2, which reads as follows:

*(3) The unemployment benefit period, which has been extended in accordance with paragraph 2 and which would have elapsed during the extraordinary situation, state of emergency or exceptional state declared in relation to COVID-19, shall be extended by one month; Article 293et paragraph 3 of the Act shall apply equally.*

2. In Article 1, paragraph 4 reads:

*"(4) Extension of the unemployment benefit period according to Article 293et paragraph 1 of the Act and paragraphs 1 to 3 shall expire no later than 31 August 2020."*

The Decree of the Government of the SR No. 186/2020 Coll. has been in force since 3 July 2020.

#### 1.1.2 Economic mobilisation

The Decree of the Government of the Slovak Republic No. 189/2020 Coll. repealing the Decree of the Government of the Slovak Republic No. 77/2020 Coll. on the implementation of certain measures of economic mobilisation as amended by the Decree of the Government of the Slovak Republic No. 117/2020 Coll. in Article 8 paragraphs 1 to 3 regulated the work obligation (according to requirements of crisis management bodies and designated subjects of economic mobilisation).

Decree No. 189/2020 Coll. repeals the Decree of the Government of the Slovak Republic No. 77/2020 Coll. to implement certain measures of economic mobilisation as amended by a regulation of the Government of the Slovak Republic No. 117/2020 Coll. (Article 1).

The Decree of the Government of the SR No. 189/2020 Coll. has been in force since 7 July 2020.

### 1.1.3 Employment during a state of emergency

The [Resolution](#) of the Government of the Slovak Republic No. 463 of 15 July 2020 on the proposal to extend the period of implementation of the measure to support the maintenance of employment in the event of a declared extraordinary situation, state of emergency or exceptional state and to eliminate their consequences was passed.

The aim of this Regulation is to extend the framework of support to mitigate the effects of the declared state of emergency in connection with the spread of COVID-19 to employment and the labour market by extending the period of providing financial compensation to employers and self-employed persons affected by the emergency situation within the project.

The government:

B. orders the Minister of Labour, Social Affairs and Family

B.1. to continue implementation of the measure to support the retention of employment in connection with the declaration of an extraordinary situation, state of emergency or exceptional state and the elimination of their consequences in August and September 2020

(immediately)

Resolution of the Government of the Slovak Republic No. 463/2020 has been in force since 15 July 2020.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The main legal source in this regard is the Labour Code – [Act No. 311/2001 Coll.](#) as amended.

Article 7 of the Directive states:

*According to Article 103 paragraph 1 of the Labour Code the basic scope of paid annual leave shall be at least four weeks.*

*According to Article 116 paragraph 3 of the Labour Code employee shall not be paid wage compensation for paid annual leave that is not taken up to the four weeks of basic paid leave unless he/she has not been able to take that leave due to termination of employment.*

According to Article 101 of the Labour Code, an employee who, throughout the continuous duration of his/her employment relationship with the same employer, performed work for the employer for at least 60 days within the calendar year shall be entitled to annual paid leave, or a proportionate part thereof, unless the employment relationship continued for the entire calendar year. The employee is considered to have worked a full day if he/she worked for the greater part of his/her shift; parts of his/her shifts worked over various days shall not be summed up.

An employee who is not entitled to annual paid leave nor to a proportionate part thereof, because he/she has not performed at least 60 days of work within the calendar year for the same employer, shall be entitled to paid leave for the days worked to the extent of



one-twelfth of annual paid leave for each 21 days worked in the given calendar year (Article 105 of the LC).

According to Article 116 paragraph 1 of the Labour Code, the employee is entitled to compensation of wages in the amount of his/her average earnings for annual leave taken (the average earning for labour law purposes is regulated in Article 134 paragraphs 1 to 11 of the Labour Code).

The employee is entitled to wage compensation at the rate of his/her average earnings for paid leave in excess of the four weeks of basic paid leave that he/she was unable to take before the end of the following calendar year (Article 116 paragraph 2 of the LC).

The key provision on invalid terminations of employment is Article 79 of the Labour Code.

According to Article 79 paragraph 1 of the Labour Code, if an employer gave an employee an invalid notice or terminated the employment relationship in an invalid manner immediately or during a probation period, and if the employee informed the employer that he/she insists on keeping his/her employment with the employer, his/her employment relationship shall not end, with the exception of a court decision that it cannot be justifiably required of the employer to further employ the employee. The employer must provide wage compensation to the employee. The employee shall be entitled to such compensation in the amount of his/her average earnings from the date he/she announced to the employer that he/she insists on keeping his/her employment until the employer agrees for him/her to continue working or until a court rules on the termination of the employment relationship.

The provision of Article 79 paragraph 2 of the Labour Code is relevant in connection with the judgment – “If the overall time for which an employee should receive wage compensation is greater than 12 months, a court may, at the request of the employer, reduce the employer’s obligation to pay wage compensation for the period in excess of 12 months by a proportionate amount or may decide to not award the employee any wage compensation for the period in excess of 12 months. Wage compensation shall be awarded for a period of no more than 36 months.”

There is no mention about paid annual leave in the context of the judgment. In view of the European Court of Justice’s judgment and the cited provisions of the Labour Code, it would probably be appropriate to reconsider the current legal regulation.

## 4 Other Relevant Information

Nothing to report.

## Slovenia

### Summary

(I) The so-called Fourth COVID-19 Mega Package has been adopted.

(II) The National Assembly has adopted an Act ratifying the Amendments to the Maritime Labour Convention.

## 1 National Legislation

### 1.1 Measures to respond to the COVID-19 crisis

#### 1.1.1 Measures to prepare for the second wave of COVID-19

The [Act on Intervention Measures to Prepare for the Second Wave of COVID-19](#) ('*Zakon o interventnih ukrepih za pripravo na drugi val COVID-19*', Official Journal of the Republic of Slovenia No. 98/2020, 10. 7. 2020 – 'ZIUPDV'), the so-called *Fourth Covid-19 Mega Package (PKP4)*, which was adopted by the government on 28 June 2020 (see Flash Report 06/2020), was passed by Parliament on 9 July 2020, published on 10 July 2020 and entered into force on 11 July 2020.

Among others, this Act regulates:

- (a) the State reimbursement of *wage compensation for temporarily laid-off workers* as a result of the pandemic,
- (b) *wage compensation during quarantine*.

The new Act strengthens the rules aiming to prevent abuse in practice and introduces some changes in terms of supervision, regulates additional funding for social institutions, including residential homes for elderly people, etc., and introduces the legal basis for the COVID-19 contact tracing mobile application. The report focusses on the measures most relevant in the field of labour law.

#### Wage compensation for temporarily laid-off workers

The provisions of this Act (ZIUPDV) regulating State reimbursement of wage compensation for temporarily laid-off workers as a result of the pandemic have retroactive effect (applicable as of 1 July 2020) to guarantee the uninterrupted continuous application of this measure, which was introduced by the so-called Second COVID-19 Mega Package ('ZIUZEOP'), which entered into force in April, however, its provisions regulated temporary measures, including reimbursement of wage compensation for temporarily laid-off workers, applied retroactively from 13 March 2020 – the first day after the date on which Slovenia declared a state of emergency.

For a detailed description of this measure, see Flash Report 05/2020.

Initially envisaged until the end of May 2020, this measure was extended until the end of June 2020 (by the Third COVID-19 Mega Package – 'ZIUOOPE') and again by this Act (the Fourth COVID-19 Mega Package – 'ZIUPDV') until the end of July 2020, with the possibility for the government to extend it twice, until the end of August and the end of September 2020, if necessary.

On 23 July 2020, the government adopted the [Decision on the extension of the measures of partial reimbursement of wage compensation for temporarily laid-off workers](#) ('*Sklep o podaljšanju ukrepa delnega povračila nadomestila plače delavcem na začasnem čakanju na delo*', Official Journal of the Republic of Slovenia No. 104/2020, 24.7.2020) and extended this measure until 31 August 2020.

#### Wage compensation during quarantine

New rules were introduced by the ZIUPDV on the amount and payment of wage compensation if a person is ordered to quarantine (some changes were introduced to the government's initial proposal during the legislative process, described in the Flash Report 06/2020).

The amount of wage compensation paid to an employee who is unable to perform work due to an ordered quarantine (home/telework is not possible), depends on the reason why the individual has been placed in quarantine:

- If an employee has been placed in quarantine *because of being in contact with a COVID-19 positive person at work*, he/she is entitled to *100 per cent compensation* (payment in the amount of his/her regular salary).
- If a person has been placed in quarantine *because of being in contact with a COVID-19 positive person outside of work*, he/she is entitled to *80 per cent compensation* of his/her salary.
- If a person *travels to a country that is on a green or yellow list* (as regards the regulations on crossing borders and the distinction between the red, yellow and green list and the rules on quarantine, see below under 1.1.2) and is placed in quarantine after returning and crossing the Slovenian border (i.e. the situation in a particular country changed and deteriorated and therefore, the country has been moved to the red list), the employee is entitled to *80 per cent compensation* of his/her salary.
- If a person *travels to a country that is on the red list* and is ordered to quarantine when returning to Slovenia, he/she is *not entitled* to salary compensation (if due to the quarantine, he/she is not able to perform work as agreed in accordance with the contract of employment and home/telework is not possible).
- There are some *exceptions* to these general rules (for example, in case of travelling *to a country that is on the red list* because of the death of a close relative or the birth of a child – a *50 per cent compensation*, but not less than *70 per cent* of the minimum wage).

The State covers all costs for wage compensation during the quarantine. The employer can apply to the Employment Service of Slovenia and is entitled to reimbursement of the compensation paid to employees in quarantine according to the above rules. Detailed provisions regulate the supervision and other relevant aspects (collection and protection of personal data, issuing a quarantine order, etc.).

This measure is valid *until 30 September 2020*.

### 1.1.2 Other measures connected to the COVID-19 crisis

Despite the fact that the government declared the end of the state of emergency related to the COVID-19 pandemic in Slovenia in May 2020, several anti-coronavirus measures have been upheld, amended and/or replaced with new ones. Since the risk of the spread of COVID-19 continues to persist, general and specific anti-coronavirus measures are still necessary and continue to apply in Slovenia. Therefore, in July 2020, the government or responsible ministries—on the basis of the [Communicable Diseases Act](#) ('Zakon o nalezljivih boleznih', Official Journal of the Republic of Slovenia No. 33/06-consolidated text as later amended; 'ZNB')—adopted different orders, ordinances and rules in relation to COVID-19, which have direct or indirect implications in the field of labour law. For example, the [Order on the designation of the endangered areas due to the infectious disease COVID-19](#) ('Odredba o določitvi ogroženih območij zaradi nalezljive bolezni COVID-19', Official Journal Nos. 95/20, 7.7.2020 and 96/20, 8.7.2020) has been adopted (endangered areas include residential homes for the elderly, special social institutions, healthcare institutions, etc.), as well as the [Order on temporary measures in the provision of health care services to contain and prevent the spread of the COVID-19 epidemic](#) ('Odredba o začasnih ukrepih na področju opravljanja

zdravstvene dejavnosti zaradi obvladovanja in preprečevanja širjenja nalezljive bolezni COVID-19', Official Journal No. 94/20, 6.7.2020).

By the [Ordinance imposing and implementing measures to prevent the spread of the epidemic COVID-19 at border crossing points of the external borders and inspection posts within national borders of the Republic of Slovenia](#) ('Odlok o odrejanju in izvajanju ukrepov za preprečitev širjenja nalezljive bolezni COVID-19 na mejnih prehodih na zunanji meji, na kontrolnih točkah na notranjih mejah in v notranjosti Republike Slovenije', Official Journal No. 100/20, 16.7.2020), the new amended rules replacing the previous ones on border crossings have been adopted. These rules may have serious implications for employees returning from abroad or commuting between countries (under what conditions quarantine may be ordered; obligations of employers with regard to migrant workers who are placed in quarantine, etc.). Countries are included in the green list (epidemiologically safe countries or administrative units of countries), the yellow list (countries that are neither on the red nor on the green list) and those on the red list (countries that are not considered safe). As a general rule, quarantine is ordered for persons entering Slovenia from countries that are on the red list, but not for persons who are returning from countries on the green or yellow list; there are different exceptions to this general rule.

By amending the ordinance regulating the operation of shops during the pandemic ([Ordinance temporarily restricting the provision and sale of goods and services to consumers in the Republic of Slovenia](#), 'Odlok o omejitvah ponujanja in prodajanja blaga in storitev potrošnikom v Republiki Sloveniji', Official Journal Nos. 67/20, 78/20 and 103/20), the government revoked the rules on minimum trading hours of shops and lifted the ban on the operation of shops on Sundays, which was introduced during the COVID-19 pandemic. There were initiatives and strong proposals (by trade unions and left-wing political parties) to keep shops closed on Sundays in the future as well, thus improving the working conditions in this sector. However, the employers' side strongly opposed such proposals, warning that such a ban on Sunday opening of shops would result in mass dismissals in this sector. [Amendments to the Ordinance](#) ('Odlok o spremembi...', Official Journal No. 103/2020, 23.7.2020) lifting the ban on the operation of shops on Sundays went into effect on 24 July 2020.

## 1.2 Other legislative developments

### 1.2.1 ILO Maritime Labour Convention (MLC, 2006)

On 9 July 2020, the National Assembly adopted the [Act ratifying the Amendments of 2014 to the Maritime Labour Convention, 2006 and the Amendments of 2016 to the Maritime Labour Convention, 2006](#) ('Zakon o ratifikaciji Sprememb iz leta 2014 Konvencije o delu v pomorstvu, 2006, in Sprememb iz leta 2016 Konvencije o delu v pomorstvu, 2006', Official Journal of the Republic of Slovenia, International Treaties, No. 3/20, Official Journal of the Republic of Slovenia No. 102/20, 22. 7. 2020); 'MKDP-A')

These amendments concern repatriation (Regulation 2.5.), the ship owners' liability (Regulation 4.2.), occupational accidents, injuries and diseases, in particular harassment and bullying (Regulation 4.3), and the Maritime labour certificate and declaration of maritime labour compliance (Regulation 5.1.).

## 2 Court Rulings

Nothing to report.



### 3 Implications of CJEU Rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The CJEU joined cases C-762/18 and C-37/19 concerned the question whether an employee is entitled to paid annual leave for the period from the date of dismissal to the date of his/her reinstatement where it is established that the dismissal was unlawful, as well as the question whether such a worker, who, following reinstatement, is again dismissed and could not use his/her annual leave, is entitled to compensation in lieu of such leave not taken. The response of the CJEU to both questions were positive. An employee is entitled to annual leave or compensation in lieu, although he/she did not actually perform work for the employer during this period. However, the CJEU pointed out that if an employee was employed with another employer during this period, the first/previous employer cannot be held responsible for the annual leave or for the payment of compensation in lieu of such leave not taken for the periods of employment with another employer. In the reasoning of its judgment, the CJEU referred to its existing case law on the right to annual leave in situations in which an employee has been absent from work and has not performed work for the employer due to sick leave.

This CJEU judgment is of relevance for Slovenian law. According to Article 159 of the [Employment Relationships Act](#) ('Zakon o delovnih razmerjih (ZDR-1)', Official Journal No. 21/2013, as later amended), every employee has the right to paid annual leave which may not be less than four weeks. An employee obtains the right to paid annual leave by entering into an employment relationship. The entitlement to paid annual leave is based on the existence of an employment relationship, the duration of the leave depends (among others) on the length of the period of employment, whereby the periods of justified absence from work, including sick leave and similar, are counted as periods of employment.

Article 162 of the Employment Relationships Act regulates the reference period and the carrying over of the unused parts of annual leave: an employee is required to use at least two weeks of annual leave in the current calendar year and the remaining part by 30 June of the following year; employees have the right to carry over and take the entire annual leave not used in the current calendar year or by 30 June of the following year for reasons of absence due to illness or injury, parental leave or childcare leave by 31 December of the following year.

There is no provision in the Employment Relationships Act which would explicitly regulate the issue raised in the joined cases C-762/18 and C-37/19.

However, in a similar situation as dealt with in the joined cases C-762/18 and 37/19, the Slovenian Higher Labour and Social Court ruled that an employee who had been unlawfully dismissed and later reinstated following a judgment of the court, was not entitled to compensation in lieu of unused annual leave for the period between the unlawful dismissal and the reinstatement. In the reasoning of its decision, the court emphasised that the unlawfully dismissed employee was entitled to salary compensation for the entire period of the illegal termination of employment, therefore also for the period when she would have been entitled to paid annual leave (granting compensation for the unused annual leave would mean that the employee received two types of salary compensation for the same period), and that the employee had not performed work during that period and was therefore able to regenerate. The court also emphasised that upon the termination of the employment relationship, an employee is not always entitled to compensation in lieu of unused annual leave. ([Higher Labour and Social Court, No. Pdp 62/2013, 13.3.2013, ECLI:SI:VDSS:2013:PDP.62.2013](#)).

The CJEU judgment in joined cases 762/18 and 37/19 is of relevance for the Slovenian legal order and the Slovenian labour courts will have to take it into account and





adequately adjust their case law on annual leave, and interpret the national rules governing the right to annual leave in line with this CJEU judgment.

## 4 Other Relevant Information

### 4.1 Unemployment rate

Official data of the Employment Service of Slovenia [show](#) that the registered unemployment rate decreased in June 2020 (after three months of continuous growth): the registered unemployment rate was 1.1 per cent lower than in May 2020; however, it was 26.3 per cent higher than in June 2019.

# Spain

## Summary

After several frantic months due to COVID-19, this month has been somewhat calmer in terms of legislative activity. The state of emergency has ended and the government has dedicated its efforts to the negotiation of the EU coronavirus recovery fund.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Border control

As mentioned in the last Flash Report, the government has introduced significant restrictions to the freedom of movement. Border controls, in particular, are tighter and also affect EU citizens.

The restrictions mentioned in the last Flash Report for EU citizens have been removed, but they are still in [force](#) for third-country nationals. Non-essential arrivals from outside the EU are not allowed until 31 August, with the exception of nationals from: Australia, Canada, China, Georgia, Japan, Morocco, New Zealand, Rwanda, South Korea, Thailand, Tunisia and Uruguay.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Dismissal (fundamental rights)

Constitutional Court, case 66/2020, 29 June 2020

A worker of a private undertaking was elected as councilwoman. According to Spanish law, this leads to a suspension of the employment contract if the new responsibility requires full-time dedication. This was the case from 1999 to 2015, when the councilwoman worked part time for the Council and requested reinstatement in her job. The employer rejected her request, arguing that the obligations as a councillor (even on a part-time basis) would not be compatible with her job. However, the Constitutional Court declared that the undertaking's refusal to reinstate her full time was contrary to the Spanish Constitution.

The right to political participation is a fundamental right according to the Spanish Constitution, as well as according to Title V of the Charter of Fundamental Rights of the European Union. The Constitutional Court [states](#) that a worker cannot be disadvantaged for exercising that right. Therefore, an undertaking cannot refuse the reinstatement of a worker under the circumstances of the abovementioned councilwomen. If a councillor changes his/her working time for the Council from full time to part time, the salary earned is reduced and that circumstance justifies the request for reinstatement in the previous job. The employer cannot refuse that request nor require proof of compatibility between the part-time work as a councillor and his/her job.

### 3 Implications of CJEU Rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

[According](#) to CJEU QH (25 June 2020, joined cases C-762/18 y C-37/19), 'where national legislation provides that a worker unlawfully dismissed must be reinstated in his or her work, Article 7(1) 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 must be interpreted as precluding national case-law according to which that worker is not entitled to paid annual leave for the period from the date of dismissal until the date of reinstatement'.

Spanish labour law does not provide an explicit rule for such situations, but a Supreme Court [ruling](#) of 27 May 2019 reached the exact same conclusion as the CJEU's QH ruling. That Spanish Supreme Court ruling explicitly mentions the Working Time Directive and also refers to CJEU case law, and in particular to the Shimizu ruling (6 November 2018, case C-684/16).

### 4 Other Relevant Information

#### 4.1 Unemployment

According to the latest information (unofficial), one million people have lost their jobs as a result of the effects of the coronavirus.

# Sweden

## Summary

Parliament has passed legislation to implement the Amendment Directive (Directive (EU) 2018/957) on posted workers.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

Nothing to report.

### 1.2 Other legislative developments

#### 1.2.1 Posting of workers

The Swedish Parliament has passed new legislation for the implementation of the “Amendment Directive” ([Directive \(EU\) 2018/957](#) of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services). The reformed Swedish legislation reflects the ambition to further strengthen the equal treatment between domestic workers and posted workers. The most prominent change, not least in relation to the problems Sweden has faced in the adoption of the outcome of the *Laval* case over a decade ago, is the possibility for trade unions to engage in industrial action to conclude a collective agreement including regulations on “wage”, and not only “minimum wage” as used to be the case previously ([para 15](#)). The wage may not exceed what an employer would otherwise be required to pay under applicable collective agreements. The objective is to enforce equal treatment between posting and domestic employers (and their employees). The updated legislation also takes into account Art. 3.1(1) (h) of the Amendment Directive. Industrial action to conclude a collective agreement on the conditions of workers’ accommodation where provided by the employer to workers who are away from their regular place of work is also possible. Another major improvement introduced by the reformed legislation is the strengthening of the position of long-term posted workers. The new provisions state that workers posted to Sweden over 12 months are entitled to statutory individual employment conditions to the same extent as domestic workers ([para 19](#)). Such provisions might include parental leave (but not parental benefit, at least not to the extent that such benefit is paid by the public insurance), leave for education and other employment rights. Occupational pension rights are explicitly excluded, even though they (i) are of significant importance and related to high costs for the employer (between 5 per cent and 30 per cent on top of the salary stipulated in the collective agreement) and (ii) are part of an individual package, which relates to the wages paid during the employment.

The government asserts that the recent legal changes will sufficiently transpose the Amendment Directive. The legislative changes entered into force on 30 July 2020, and also covered several other aspects apart from those highlighted above.

(Government Bill, [Prop. 2019/20:150 Mer likabehandling och ett stärkt skydd vid utstationering](#), and the report of the parliamentary committee, [Arbetsmarknadsutskottets betänkande 2019/20:AU14](#)).

## 2 Court rulings

Nothing to report.

### 3 Implications of CJEU Rulings and ECHR

#### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The CJEU has issued a ruling in the joined [cases C-762/18 and C-37/19](#) on annual leave (Art 7.1) and compensation for annual leave not taken (Art 7.2) [Directive 2003/88/EC](#) in situations in which the employment contract was unfairly or incorrectly terminated and the employee is reinstated following nullification of the dismissal by a court of law. The European Court of Justice concluded that the Directive precludes national case law according to which the employee is not entitled to paid annual leave or compensation for annual leave not taken between the period of termination and reinstatement.

The general position in Swedish legislation ([Employment Protection Act, para 34](#)) is that (unfair) dismissal (primarily for personal reasons) can be suspended during the litigation until a final decision on its legitimacy or fairness is made by a court. The result is that the employment contract remains in place and that the employer is required to continue to pay both the employee's salary and other employment-related benefits. The two situations before the CJEU would likely have been addressed in this manner in Sweden. Even if the court eventually finds that the dismissal was fair, the employee will not be required to reimburse the payments he or she has received. A number of cases have addressed issues of payment or damages in relation to such dismissals (see Labour Court decision AD 1997 No. 130, AD 2000 No. 103 and [AD 2014 No. 62](#) (a vicar had been summarily dismissed and because the dismissal was overturned, he was entitled to, among other damages and payments, compensation for annual leave)).

### 4 Other Relevant Information

Nothing to report.

# United Kingdom

## Summary

Measures to provide financial support during the COVID crisis have been amended.

## 1 National Legislation

### 1.1 Measures to respond to COVID-19 crisis

#### 1.1.1 Key documents

- The relevant government web page is available [here](#).
- Specific advice for employees, employers and businesses is available [here](#).
- Guidance on social distancing (last update on 31 July 2020) is available [here](#).
- The latest rules are available [here](#).
- People in [Scotland](#), [Wales](#) and [Northern Ireland](#) have to follow the specific rules in those parts of the UK.
- Powers on local lockdowns: the [Health Protection \(Coronavirus, Restrictions\) \(England\) \(No 3\) Regulations 2020 \(SI 2020/750\)](#) were made and came into force on 18 July 2020.

#### 1.1.2 New documents

- This is the latest guidance on the equivalent of furlough for the self-employed (SISS): here is the direction: <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>  
The scheme has been extended. If an individual was eligible for the first grant and can confirm to HMRC that his or her business has been adversely affected on or after 14 July 2020, the individual will be able to make a claim for a second and final grant from 17 August 2020.  
  
The scheme allows individuals to claim a second and final taxable grant worth 70 per cent of their average monthly trading profits, paid out in a single instalment covering 3 months' worth of profits, and capped at £6,570 in total.
- The furlough scheme for employees: (latest update 28 July 2020) is available [here](#).
  - The government has [published](#) an errors guide.
- in addition to a penalties guide, which is available [here](#).
- The Chancellor has confirmed that there will be no further extension of the furlough or SEISS scheme
- There is a new [scheme](#) to try to keep people in work: the Job Retention Bonus. This is part of the Plan for Jobs (budget £30 bn). Full details are [here](#). The JRB is described as follows:
  - The government will introduce a one-off payment of £1,000 to UK employers for every furloughed employee who remains continuously employed through to the end of January 2021. Employees must earn above the lower earnings limit (£520 per month) on average between the end of the Coronavirus Job Retention Scheme and the end of January 2021. Payments will be made from February 2021. Further details about the scheme will be announced by the end of July.

Specifically, on employment-related issues, on 31 July 2020, the [Employment Rights Act 1996 \(Coronavirus, Calculation of a Week's Pay\) Regulations 2020 \(SI 2020/814\)](#) came into force. The Regulations ensure that statutory entitlements based on a week's

pay and connected with the termination of employment are not reduced as a result of an employee being furloughed. This means that employees will get, for example, full redundancy pay based on their pre-furlough entitlement, not at the 80 per cent level.

### 1.2 Other legislative developments

Nothing to report.

## 2 Court Rulings

### 2.1 Employment status

*Employment Appeal Tribunal, Appeal No. UKEAT/0022/20/LA (V), 14 July 2020*

A well-known British cyclist was dismissed from the British cycling team shortly before the Rio Olympics. What was her employment status? According to the employment tribunal, she was neither an employee nor a worker and the EAT **upheld** the ET's decision.

### 2.2 Agency work

*Employment Appeal Tribunal, Appeal No. KEAT/0050/20/JOJ, 10 July 2020*

The EAT also **upheld** an employment tribunal decision that workers employed on indefinite contracts by an agency but supplied to one end user even on a long-term basis can be considered as having been supplied 'temporarily' within the agency work regulations.

## 3 Implications of CJEU Rulings and ECHR

### 3.1 Annual leave

*CJEU case C-762/18, 25 June 2020, Varhoven kasatsionen sad na Republika Bulgaria*

The Court ruled:

- 1) *L'article 7, paragraphe 1, de la directive 2003/88/CE du Parlement européen et du Conseil, du 4 novembre 2003, concernant certains aspects de l'aménagement du temps de travail, doit être interprété en ce sens qu'il s'oppose à une jurisprudence nationale en vertu de laquelle un travailleur illégalement licencié, puis réintégré dans son emploi, conformément au droit national, à la suite de l'annulation de son licenciement par une décision judiciaire, n'a pas droit à des congés annuels payés pour la période comprise entre la date du licenciement et la date de sa réintégration dans son emploi, au motif que, pendant cette période, ce travailleur n'a pas accompli un travail effectif au service de l'employeur.*
- 2) *L'article 7, paragraphe 2, de la directive 2003/88 doit être interprété en ce sens qu'il s'oppose à une jurisprudence nationale en vertu de laquelle, en cas de rupture d'une relation de travail intervenant après que le travailleur concerné a été illégalement licencié, puis réintégré dans son emploi, conformément au droit national, à la suite de l'annulation de son licenciement par une décision judiciaire, ce travailleur n'a pas droit à une indemnité pécuniaire au titre des congés annuels payés non utilisés au cours de la période comprise entre la date du licenciement illégal et celle de sa réintégration dans son emploi.*





In the UK, this question has never arisen in case law. Further, while reinstatement and reengagement are remedies for unfair dismissal, they are virtually never awarded.

#### **4 Other Relevant Information**

Nothing to report.

## HOW TO OBTAIN EU PUBLICATIONS

### ***Free publications:***

- one copy:

via EU Bookshop (<http://bookshop.europa.eu>);

- more than one copy or posters/maps:
  - from the European Union's representations ([http://ec.europa.eu/represent\\_en.htm](http://ec.europa.eu/represent_en.htm));
  - from the delegations in non-EU countries ([http://eeas.europa.eu/delegations/index\\_en.htm](http://eeas.europa.eu/delegations/index_en.htm));
  - by contacting the Europe Direct service ([http://europa.eu/europedirect/index\\_en.htm](http://europa.eu/europedirect/index_en.htm)) or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (\*).

(\* ) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

### ***Priced publications:***

- via EU Bookshop (<http://bookshop.europa.eu>).

### ***Priced subscriptions:***

- via one of the sales agents of the Publications Office of the European Union ([http://publications.europa.eu/others/agents/index\\_en.htm](http://publications.europa.eu/others/agents/index_en.htm)).



Publications Office