Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper- Slovenia

PROMOTING WORK-TO-WORK TRANSITIONS IN SLOVENIA

Peer Review on "Dismissal Law 2.0. How to promote work-to-work transitions and sustainable labour relations?"

The Hague (Netherlands), 22-23 October 2015

Prof. Luka Ticar, PhD

October, 2015

EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit C1

Contact: Emilio Castrillejo

E-mail: EMPL-C1-UNIT@ec.europa.eu

Web site: http://ec.europa.eu/social/mlp

European Commission

B-1049 Brussels

EUROPEAN COMMISSION

Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Directorate-General for Employment, Social Affairs and Inclusion

Peer Review on "Dismissal Law 2.0. How to promote work-to-work transitions and sustainable labour relations?"

The Hague (Netherlands), 22-23 October 2015

October, 2015

This document 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

Table of Contents

1 Labour market situation in the peer country

This paper has been prepared for a Peer Review within the framework of the Mutual Learning Programme. It provides information on Slovenia's comments on the policy example of the Host Country for the Peer Review. For information on the policy example, please refer to the Host Country Discussion Paper.

As many countries in Europe that have been affected by the economic crisis Slovenia made some reforms of the legislation regulating the labour market as well. Since 2008 when the crisis started, the Slovenian parliament enacted legislative changes of the *Zakon o delovnih razmerjih* (Employment Relationships Act-ERA) and *Zakon o urejanju trga dela* (Labour Market Regulation Act) as well. The ERA was adopted as wholly new law in March 2013[1]; the second law which was enacted in September 2010 has, until now, been changed three times already.[2] It also has to be noted that the recently enacted *Zakon o preprečevanju dela in zaposlovanja na črno* (Prevention of Undeclared Work and Employment Act, Official Gazette of the Republic of Slovenia, No. 32/2014) and the new *Zakon o inšpekciji dela* (Labour Inspection Act, Official Gazette of the Republic of Slovenia, No.19/2014) tighten the states' relationship towards offenders[3] in the labour market. Slovenia has been facing problems of high unemployment and law enforcement for quite some time. Labour rights violations and equally, unemployment rates increased during the evolution of the crisis. Therefore the State wanted to liberalise labour legislation on the one hand, and improve its enforcement on the other hand.

For a number of years, the Slovenian labour market has been described as inflexible and unable to adapt to the changing macroeconomic situation and consequentially poor competitiveness of the Slovenian economy. The changes in the ERA were purposed to upgrade the flexicurity system by providing better protection of workers' rights, lowering labour costs, also through the simplification of dismissal procedures for employers, and a more efficient supervision and judicial protection.

In addition to insufficient flexibility, some other challenges for the Slovenian labour market in adopting changes also included: great labour market segmentation, reduction in employment rates and rise in unemployment, high unemployment among young people and low employment rates of older workers (after 55 years of age). The European Commission repeatedly cautioned Slovenia regarding its high level of protection of indefinite employment, i.e. significant differences between fixed-term and indefinite employment (great labour market segmentation) in its recommendations concerning the national reform programme. Slovenia also ranks low in global competitiveness indexes, which also include assessments of labour market regulations. Frequently, employment relationships in the Republic of Slovenia have been deemed inflexible.

[1] Published in Official Gazette of the Republic of Slovenia, No. 21/2013.
[2] The Act and its three changes have been published in Official Gazette of Republic of Slovenia, No. 80/2010, 21/2013, 63/2013, 100/2013.
[3] Many employers breach labour legislation in different ways. In recent years the most frequent areas of labour law where misconduct of employers was disclosed are connected with salaries and fixed-term employment contracts.

2 Assessment of the policy measure

1. The objective of this paper is to demonstrate some of the key legislative solutions within the scope of the Slovenian labour market. In order to follow the promotion of work-to-work transitions and sustainable labour relations, we will emphasize only two out of the four key legislator's objectives reforming the law: i) decrease of labour market segmentation, ii) increase of flexibility. Both objectives aim at achieving greater willingness among employers to engage workers in open-ended employment relationships. Therefore fixed-term contracts of employment were additionally restricted (made less attractive), dismissal rules were loosened and there were some measures for greater internal flexibility adopted.

Fixed term contracts

A key change of the ERA, regulating fixed term employment contracts, is the introduction of a severance pay in case of termination of such employment contract. In case of termination of fixed-term employment contracts in the duration of one year or for a shorter period, the Act provides a right to severance pay in the amount of 1/5 of average monthly salary for full-time employment in the last three months or from the period of work before the termination of the fixed-term employment contract. In cases of termination of fixed-term contracts for over one year of duration, the worker is entitled to receive a severance pay for the first year of employment and a proportionate share of severance pay for each month of service (1/5 basic salary + 1/12 of 1/5 of basic salary for each month of service over 1 year of employment).

ERA restricts the signing of fixed-term employment contracts by forbidding the signing of one or several successive fixed-term employment contracts for the same work, the uninterrupted duration of which would be longer than two years (except in specifically stipulated cases). There is no legal presumption of an open-ended employment contract in case of multiple renewal of a fixed-term contract within the 2 year period.[4] We find as a common practice among employers to conclude several fixed-term contracts for a short period, one, two, three months. It is important that new legislation has kept emphasizing the importance of a temporary need[5] of the service of an employee as the most important factor for a legal conclusion of a fixed-term contract.

Introduction of restrictions concerning concluding fixed-term employment contracts in case of employer (temporary work agency) providing work for a user undertaking: i) the number of workers assigned to users may not exceed 25 per cent of the number of workers employed with the user undertaking, ii) Temporary work agency may conclude fixed term contract only when the user undertaking fulfils all the conditions for lawful fixed term contract.

Dismissal

Dismissal rules contained in ERA are strongly influenced by the ILO Convention no. 158 and Revised European Social Charter as well. This is also the main reason for a different conception of dismissal issues as applies in the host country, since the latter has not ratified the C158. Nevertheless the reasons for a termination of the employment contract might have been similar (business reason, reason of incompetence, reason of misconduct), while the procedural part of it is rather different. First of all there is no preventive role of any administrative or judicial body. The employer is in power to decide whether, when and on which ground will start the procedure of termination following all the relevant rules for a specific valid reason. In every case the dismissed worker might start the procedure in front of a labour court which has to decide upon the legality of the termination of the contract.

[4] Legal presumption of an open ended employment contract applies after the two year period.
[5] An employment contract shall be concluded for a limited period of time as required for the completion of a certain work.

The most important changes of the old regulation of the dismissal are: i) **Lower severance payments:** In case of termination of an employment contract for a business reason or for a reason of incompetence on the part of the worker, the employer shall be obliged to pay the worker severance pay in the amount of 1/5 of the wage basis for the period of employment from one to ten years, 1/4 of the wage basis for an employment period from ten to twenty years with the employer (previous ERA: 1/5 of wage basis for a period from one to five years,1/4 of wage basis for a period of five to fifteen years, 1/3 of wage basis for employment in the duration of over 15 years). The basis for the calculation of severance pay shall be the average monthly salary which the worker received or which the worker would have received if working during the last three months before cancellation, ii) **Shorter periods of notice**, iii) **Simplification of dismissal procedures in indefinite term employment contracts**, in which the new legal regulations refer to: 1) cancellation of informing the employee of intended notice, 2) cancellation of obligation of offering a new suitable employment during the dismissal procedure (Article 91 of the ERA), 3) simplification of the employee defence procedure (Article 85 of the ERA), 4) regulation of delivery notices of cancellation of employment (Article 88 of the ERA)

There is no payment similar to a transition allowance in the host country that regulated in Slovene labour legislation. Therefore there are basically no special financial means of promoting fast re-employment in case of termination of employment contract due to fault (misconduct) or volition, since the worker in these cases is not entitled to a severance payment. We think that for the adoption of such or similar payment on the burden of employer there is lack of consensus among social partners. Even more, employers in Slovenia would like to diminish their burden of financing of severance payments with establishing a special »severance payment fund«, but until now the needed consensus among social partners has not been achieved yet.

Internal flexibility

Option of other work: the ERA (Article 33) introduced the option of assigning employees to other work in the course of an employment relationship, if this option is not otherwise regulated with a special act or collective agreement. The Act stipulates cases (with the purpose of maintaining employment or assuring uninterrupted course of the labour process) and conditions (appropriabillity[6] of other work, temporal limitation to a three-month period, retention of more favourable pay for the work performed), in which such obligations may be assigned to employees in written form. Smaller employers (with 10 or less employed workers) are also provided greater internal flexibility, since they are allowed to temporarily assign workers other, suitable[7] work.

Institute of temporary inability to provide work for business reasons (: In this case the worker is entitled to wage compensation in the amount of 80% of the wage basis. The employer may issue an invitation for temporary lay-off for a period not exceeding six months per calendar year.

Decrease in labour protection of elderly employees– age of workers with ensured special lay-off protection has been increasing gradually. The ERA namely accounts for the rise in retirement age foreseen by the retirement legislation. Special protection against lay-offs has been granted to workers over 58 years of age or workers, who have not yet achieved retirement age, but will achieve retirement age within five or less years of pensionable service. In order to increase the employment options of older employees, lay-off protection is not granted to workers who already satisfy the criteria for special lay-off protection prior to the signature of a new contract of employment. Workers who

[6] Appropriate work- work for which the worker fulfils the job requirements and for which the same type and level of education are required as for the performance of work for which the worker has concluded the employment contract,

[7] Suitable work- work for which the same type and not less than one level lower of education are required as for the performance of work for which the worker has concluded the employment contract.

sign a new contract of employment based on the offer of a new contract with the same or other employer do not lose the right to special lay-off protection.

2. As far as unemployment benefit is concerned we should emphasize that the maximum duration of these benefits is 25 months. For such a period of receiving an unemployment benefit are eligible only insured persons older than 55 years of age and with the insurance period exceeding 25 years. We must mention that rights to unemployment cash benefit shall not be exercised by an insured person who became unemployed through his or her own fault or volition.

The Labour Market Regulation Act regulates and distinguishes between appropriate and suitable employment. There is no such presumption that every work is deemed to be suitable after six months of unemployment like in the host country. However there is a solution that an unemployed person may be offered suitable employment after three months upon entering the person in the register of unemployed persons if there are no unemployed persons for which such employment is considered appropriate.

Within the context of promotion of work-to-work transitions we can mention the two following solutions: i) The insured person who seeks full-time employment and signs a part-time employment contract shall retain the right to be paid a proportionate part of the cash benefit and proportionate part of contributions for pension and disability insurance until the fulfilment of conditions for retirement for the difference to full-time employment; ii) The cash benefit received by the insured person is reduced, who during cash benefit eligibility during unemployment performs work for which he/she receives or is eligible to receive income from work, which upon payment of taxes and mandatory contributions exceeds 200 Euros.

The latter solutions might have a similar objective as the Dutch solution: offsetting of income especially in view of combining the unemployment benefit and employment. I suppose the Dutch solution corresponds with the obligation to accept any work after six months of unemployment. Slovene regulation is less strict in that regard.

3 Assessment of the success factors and transferability

Briefly presented legislative solutions that are rather new have shown some effects already. The latter were shown specifically in the first year of their enforcement. Then the effects decreased a little. Nevertheless all the measures seemed to be appropriate and adequate. The dilemma as to whether that is enough, remains. The fact is that the adoption of certain reforms does not suffice *per se* but only after consistent enforcement of them in practise. This problem remains despite some legislative changes of labour inspection and its jurisdiction as well.

However some positive effects (at least in states' view) of the reformed legislation can be shown:

- the EPL Index, measured by OECD, has decreased,
- greater labour market flexibility shown at least by decreased unemployment rates;
- employers are less reluctant toward open ended employment, importantly in case of first employment
- trend of expansion of fixed-term contract has been under control,
- greater employment of workers older than 55.

The main challenge remaining for the future is to decrease the segmentation between those engaged with an employment contract and those engaged without or beyond it. The share of bogus self-employed and those working in a disguised employment relationship is still rising. Employers are seeking a cheaper way of engaging active population, which leads to a more or less obvious breach of legal rules.

To conclude we would like mention another three legislative solutions aiming toward more flexible labour market and consequently toward work to work transitions:

Option of temporary and occasional work of retired persons: the Labour Market Regulation Act (Article 27.a, 27.b) allows for the option of temporary and occasional work of retired persons. Temporary or occasional work may be performed on the basis of a temporary or occasional work contract as a special civil-law contractual relationship between the employer and the beneficiary (retired person), which may include some employment relationship elements as are stipulated by legislation regulating employment relationships. Together with a unique regulation of **student work** this form of work represents an important source of flexibility the employers are »gasping« for.

Inclusion of workers in suitable active policy measures at the labour market during the notice period: in accordance with Article 97 of the ERA, an employer is required, within the notice period, to enable the worker to be absent from work for at least one day per week to integrate into activities in the labour market in accordance with labour market regulations. The employer is obliged to pay wage compensation for the time of such absence from work in the amount of 70 per cent of the wage basis, and is later remunerated by the Employment Service of the Republic of Slovenia (Article 13 of the Labour Market Regulation Act).

Financial compensation instead of reintegration: in accordance with Article 118 of the ERA a labour court may, upon a proposal made by the worker or employer, rule in favour of financial compensation instead of reintegration (return to work) after deeming the termination of employment contract illegal, in cases where with regard to the circumstances and the interests of both contracting parties a continuation of the employment relationship would no longer be possible. The Act also provides for the circumstances which the court is obliged to account for in establishing the compensation amount (a maximum of 18 monthly salaries of the worker).

4 Questions

- Is a legal position of a dismissed worker in Netherlands somehow depended on reason for a dismissal?
- If every dismissed person is eligible to the transition allowance, where, if so, does a differentiation among them occur?

5 Annex 1: Summary table

Labour market situation in the Peer Country
• Slovenia is a country strongly affected by the economic crisis • Slovenia has been facing relatively high unemployment rates • Breaching of labour legislation was and still is a major issue • New forms of work that are based on civil law contracts (and not employment contract) occurred
Assessment of the policy measure
• Legislator reformed legislation regulating labour market • There were measures adopted in order to decrease labour market segmentation and increase flexibility • Fixed-term contracts were made less attractive • Open-ended employment was loosened of some limitations
Assessment of success factors and transferability
• All measures seemed appropriate and adequate • The effects and results are shown but not to a sufficient extent • The 'enforcement of legislation' issue and an issue of civil law grounded work with no labour protection remain
Questions
• Is there in the Netherlands a differentiation among dismissed workers depending on the reason for termination?

6 References:

L. Ticar, Nove oblike dela, Manet, 2012, Ljubljana.

I.Bečan, et.al., Zakon o delovnih razmerjih s komentarjem, GV založba, 2008, Ljubljana.

Governmental internet sources.


Publications Office