



# Flash Reports on Labour Law February 2019

Summary and country reports

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# Executive Summary

## 1 National level developments

In February 2019, important developments in labour law took place in many Member States and European Economic Area (EEA) countries (see Table 1). Legislative initiatives and case law focused specifically on the following issues:

### Working time

In **Austria**, the Rest Act was amended following the CJEU ruling C-193/17, 22 January 2019, *Cresco Investigation*, introducing a 'personal public holiday' for all employees, irrespective of their religion. On that day, which can be freely chosen by the employee, the employer may only order work under the general conditions applicable to public holidays (including wage supplements). In the **Czech Republic**, a reform limiting the application of working time regulations to the part of working time during which the academic worker performs 'direct pedagogical activities' is highly controversial. In **France**, the Supreme Court ruled that temporary changes to a part-time worker's working hours lead to a reclassification of her contract as one of indefinite duration. In **Germany**, the Federal Labour Court has implemented CJEU ruling C-684/16, 06 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (concerning the forfeiture of the right to paid annual leave) into national case law. In **Ireland**, the Employment (Miscellaneous Provisions) Act 2018, coming into operation on 04 March 2019, includes restrictions for zero-hours contracts and a banded-hours system where an employee's contract does not reflect the actual hours worked. In **Luxembourg**, a bill on time saving accounts has been passed. In **the Netherlands**, compensation for overtime was adapted to ensure that the hourly minimum wage is paid for all hours worked in a month instead of only compensating overtime with leave in another period. In **Poland**, a draft law on

the principles of work performance in commercial establishments would grant workers in this sector a day off every second Sunday.

### Dismissal protection

In **Austria**, the Supreme Court found that the notion of pregnancy that entitles a worker to special protection against dismissal is not dependent on the proven presence of an embryo capable of developing, if a miscarriage has taken place. In **France**, the Supreme Court has ruled that a dismissal due to absences linked to health repercussions from harassment in the workplace is void. Meanwhile, labour courts have rendered conflicting decisions on the new upper cap for dismissal compensation enacted by an ordinance, with several decisions refusing to apply these caps by referring to their non-conformity with international conventions. In **Germany**, Parliament has passed a law according to which so-called risk carriers in financial institutions are treated the same way as senior executives as far as protection against dismissal is concerned. In **Hungary**, the Supreme Court has confirmed that dismissal without notice, even if for very serious misconduct, must be exercised within the 'subjective deadline' of 15 days. In **Latvia**, the Supreme Court has ruled that compensation for unused paid annual leave must be calculated based on the pay earned in the given period when that right to annual leave was accumulated. In **Norway**, the Supreme Court has confirmed the practice of the results of a general evaluation of the principle of seniority weighed against other criteria for the selection criteria of employees to be dismissed in case of downsizing. In the **UK**, an increase in tribunal compensation limits on 06 April 2019 will raise the maximum compensatory award for unfair dismissal from GBP 83 682 to GBP 86 444.

### Posting of workers

In **Denmark**, an industrial arbitration ruling ordered a fine to be paid to a trade



union by a posting entity that had disregarded minimum rates of pay, pensions and holiday payments under the applicable collective agreement. In **Estonia**, the Supreme Court found that to determine which labour legislation will be applicable when working abroad, it is necessary first to establish the employee's customary place of employment in accordance with the Rome I regulation. The PWD does not apply when the employee has never worked in the sending country. In **France**, an ordinance on the implementation of the Posting Directive was passed by the Labour Ministry. It concerns, in particular, information requirements in case of posting by a foreign temporary employment agency, rules on equal treatment, and the introduction of a new status of long-term posted employees and sanctions for non-compliance. Posting was also the subject of two cases before the Court of Cassation, one of which concerned a multinational subcontracting arrangement in which the employee had to be reclassified as directly employed by the parent company. In **Lithuania**, the Supreme Court confirmed that for situations dated before 01 July 2017 courts have the obligation 'ex officio' to verify compliance with the minimum wage legislation of the host Member State. In **Sweden**, changes of the Posting of Workers Act introduce subcontracting liability covering all tiers of the supply chain. The new regulation is, however, 'semi-dispositive' and can thus be altered by collective agreement.

## Retirement

In **Cyprus**, the Administrative Court has ruled that one-off lump sum retirement benefits are property rights protected by national, ECHR and EU law. In the **Czech Republic**, the Act on Civil Service was amended to the effect that, inter alia, State secretaries are no longer disciplinarily responsible to special commissions but can be recalled by the government based on proposals by the respective ministers. In **Romania**, the Court of Cassation has found that working conditions that entitle workers to

early retirement – and thus early social security pensions – cannot be established retroactively through mediation between the parties. In **Slovenia**, a legislative proposal that would allow full-time work for pension recipients is being publicly discussed. In **Spain**, contributions to the social security pension system as well as other areas of social security have been amended with a view to discouraging fixed-term contracts. In **Sweden**, proposed legislation plans to extend regular employment protection (i.e. delay the retirement age) from age 67 to 68 and, in 2023, to age 69. The earliest regular retirement age will be raised to 62 and later, to 63 years.

## Public employment

In **Cyprus**, major trade union associations have challenged the unilateral changes to employment conditions in the public health sector. In the **Czech Republic**, as mentioned above, academic employees in the public sector will face a substantial restriction of protection by working time-related regulation. In **Iceland**, restrictions on hiring third-country nationals in the public sector have been abolished. In **Portugal**, minimum wages for the public sector have been determined by law.

## Equal treatment

In **Austria**, apart from the aforementioned abolishment of discrimination on grounds of religion regarding public holidays, the equally aforementioned judgment of the Supreme Court has clarified that pregnant employees are protected against discriminatory dismissal in all cases of miscarriage. Also in **Germany**, a ruling of the CJEU on discrimination on the grounds of religion (C-68/17, 11 September 2018, *IR/JQ*) was reflected in the national legal order by means of a judgment of the Federal Labour Court. In the **Czech Republic**, the Constitutional Court has refused to recognise a prohibition of 'discrimination by association' in employment in a case

where a teacher's dismissal was linked to the exclusion of a pregnant student. Moreover, the Supreme Court's jurisdiction on wage discrimination was applied in relation to public sector pay tariffs for the first time. In **Portugal**, new legislation on equal pay for men and women, which was passed in August last year, has entered into force.

### Wages

In **Belgium**, the social partners have concluded an agreement on the maximum margin for increasing the labour costs for the period 2019-2020 at 1.1 per cent, which in addition to the automatic indexations of wages in Belgium are always guaranteed in the event of a rise in consumer prices and the so-called 'barema' or scale wage increases. In **Estonia**, the average wage in 2018 has increased by 7.3 per cent compared to 2017 and amounted to EUR 1 310 (gross) per month. In **Portugal**, the aforementioned minimum wage in the public sector, which is higher than in the private sector, has giving rise to some debate about discrimination between the two groups of employees.

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

Topic	Countries
Working time	AT CZ FR IR LU PL
Dismissal protection	AT DE FR HU NO UK
Posting of workers	DK EE FR LT SE
Retirement	CY RO SE SI
Public employment	CZ CY IS PT
Equal treatment (sex)	AT CZ PT
Annual leave	DE LV
Brexit	BE CZ
Collective redundancies	IT NO
Equal treatment (religion)	AT DE
Fixed-term employment	ES LI
Holiday/Sunday work	AT PL
Part-time work	FR IR
Strike	DE IS
Temporary Agency Work	RO UK
Third country nationals	BE IS
Transfer of Undertakings	IT UK
Wage	BE EE
<i>Aquis communautaire</i>	HR
Automatic termination	PT
Collective agreements	BE
Competences of authorities	BE
Conflict of laws	EE
Day labour	RO
Dismissal compensation	UK
Employment information	IR
Employment status	UK
Freedom of association	ES
Harassment	FR
Illegal employment	BE
Information and consultation	FR
Insolvency	IT
Minimum wage	PT
Parental leave	EL
Pregnant workers	AT
Sick pay	CZ
Social partner consultation	IS



Social security	ES
Strike	IS
Termination agreement	DE
Trade secrets	ES
Unemployment benefit	IT
Zero-hours contracts	IR

# Austria

## Summary

(I) The Rest Act ('*Arbeitsruhegesetz*', ARG) was amended following the CJEU ruling C-193/17, 22 January 2019, *Cresco Investigation*, stipulating that entitling only Protestant employees to a public holiday on Good Friday is to be considered discriminatory on the basis of religion.

(II) The Supreme Court found that the notion of pregnancy that entitles a worker to special protection against dismissal is not dependent on the proven presence of an embryo capable of developing, if a miscarriage has taken place.

## 1 National Legislation

### 1.1 Public holidays

Following an intense public debate on the *Cresco Investigation* ruling, the National Assembly passed a [Law amending the Rest Act](#) ('*Arbeitsruhegesetz*' et al. (154/BNR), hereinafter: ARG) on 27 February 2019. That law had hitherto provided a public holiday on Good Friday to members of the Protestant Churches and Old Catholic Church *only* (all minority churches, comprising in total roughly 4 per cent of the Austrian population). The amendment has yet to pass the Federal Assembly, and will enter into force the day after it is passed.

The amendment abolishes Good Friday as a public holiday (which, according to the CJEU ruling, should have become a public holiday for all Austrian workers if the legislation was not amended). Instead, Austrian workers now have the right to choose one of their 25 days of annual leave to be their 'personal public holiday'. They must communicate their choice three months in advance in writing (in the three months after the law has entered into force, workers will have to communicate their choice of 'personal public holiday' two weeks in advance). The employer may not object to the individual worker's choice of personal public holiday. If, however, the employer requests the worker to work on her chosen 'personal public holiday' and the worker agrees to the request, she is entitled not only to pay, but also to public holiday surcharges. This means this working day would be paid double. The right to one annual personal public holiday will have been consumed but the employee's annual leave is not used for that day.

The amendment also declares all provisions in collective bargaining agreements (hereinafter: CBA) and works agreements that allow Good Friday to be a public holiday exclusively for members of the minority churches to be unlawful, now and in the future.

Sources:

Newspaper articles by '*ORF*' are available [here](#) (general information, 27 February 2019), [here](#) (about the general CBA, 26 February 2019) [here](#) (reaction of the Protestant Churches, 28 February 2019) and [here](#) (reaction of trade unions, 01 March 2019).

Newspaper articles by '*Der Standard*' are available [here](#) (general information, 27 February 2019) and [here](#) (regarding legal issues, 21 February 2019).

Newspaper articles by '*Die Presse*' are available [here](#) (about interference with CBAs, 27 February 2019) and [here](#) (regarding the legislative process, 27 February 2019).

A newspaper article by '*kurier*' of 28 February 2019 is available [here](#) (positive legal assessment on the interference with CBAs).

## 2 Court Rulings

### 2.1 Quality of a pregnancy, information obligation of the employee

Supreme Court, No. 9 Ob A 116/18a, 17 December 2018

§ 10 of the [Act on the Protection of Mothers](#) ('Mutterschutzgesetz' – hereinafter: MSchG) provides (unofficial translation by the author)

*"(1) Employees may not be legally dismissed during pregnancy and for a period of four months after childbirth, unless the employer is not aware of the pregnancy or childbirth.*

*"(2) A termination is also legally invalid if the employer is informed about the pregnancy or childbirth within five working days of delivery of the notice of termination or, in the case of written termination, within five working days of its delivery."*

In the present case, the employee informed her superiors on 16 November 2016 that she suspected that she was pregnant. At the time, she had carried out a pregnancy test from the pharmacy with a positive result. In an examination on 21 November 2016, the pregnancy could not be verified by ultrasound because neither an embryo nor its heartbeat was visible. On 24 November 2016, a miscarriage became apparent due to an only slightly increased beta-HCG value. On 28 November 2016, the plaintiff visited her gynaecologist because of heavy bleeding. A massive decrease in beta-HCG value was found during examinations in a hospital on 29 November 2016 and 05 December 2016. On 05 December 2016, the plaintiff's pregnancy was finally terminated and she was officially informed thereof. It is not possible to determine whether at any time an embryo that could not have developed was present and had passed away, or whether at any time it was an intact pregnancy and the embryo would have been capable of developing.

The employer dismissed the employee by letter dated 25 November 2016. The letter was served to the employee on 29 November 2016. On 07 December 2016, she went to see the specialist, requested confirmation of the aborted pregnancy and transmitted it to the defendant.

The legal question concerned the 'qualitative requirements for a pregnancy' to be considered a 'pregnancy' in the legal sense. The employer argued that in the present case, this was not the case as the employee did not have an intact pregnancy with an embryo that was capable of developing. This was already answered in Decision [9 ObA 23/95](#) to the effect that the special protection against dismissal pursuant to § 10 MSchG only applies if a pregnancy has actually already occurred at the time of the dismissal. The law focuses on the condition of the woman entitled to protection from conception, which in principle leads to a birth, until the birth, because of the need for the woman's protection during the altered physical condition. This is the case irrespective of whether the fertilised ovum has already nested in the uterine lining and whether proof of pregnancy can be easily determined. With regard to protection against dismissal under § 10 MSchG, the pregnancy that began with the union of the ovum and sperm cells is therefore, in principle, decisive except in the case of in vitro fertilisation.

The court therefore decided that the fact that fertilisation had taken place in the present case was to be inferred from the miscarriage. It stressed that it is irrelevant with regard to the special protection against dismissal whether there was an 'intact' pregnancy and an embryo capable of developing or a pregnancy-like condition such as an ectopic pregnancy. It also stressed that it is sufficient that the 'employee informed



*the employer that she is probably pregnant'*, if she was actually pregnant at the time of the notice.

This decision is of interest from an EU labour law perspective as Directive 92/85/EEC also provides for the protection of pregnant workers against dismissal in Article 10. Pursuant to Article 2 (a), a pregnant worker shall mean a pregnant worker who informs her employer of her condition in accordance with national legislation and/or national practice.

The CJEU has ruled in case [C-506/06, 26 February 2008, Mayr](#) – para 40, that it is the earliest possible date in a pregnancy which must be chosen to ensure the safety and protection of pregnant workers. In the decision of the case [C-232/09, 11 November 2010, Danosa](#) – para. 55, it was also stated that if, without having been formally informed by the worker in person, the employer learns of her pregnancy, it would be contrary to the spirit and purpose of Directive 92/85/EEC to interpret the provisions of Article 2(a) of that Directive restrictively, and to deny the worker the protection against dismissal provided for in Article 10.

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

Nothing to report.

### **4 Other relevant information**

Nothing to report.



# Belgium

## Summary

(I) A draft law, to be applied in case of a hard Brexit, provides rules for the coordination of social security and the treatment of foreigners in employment policy measures.

(II) The Belgian Constitutional Court has specified the extent to which the Federal Authority and the Regions are territorially competent to impose criminal sanctions in the event of infringements in case of illegal employment of third-country nationals from outside the EU.

(III) The social partners have concluded an agreement on the maximum margin for increasing the labour costs for the period 2019-2020 at 1.1 per cent, which in addition to the automatic indexations of wages in Belgium are always guaranteed in the event of a rise in consumer prices and the so-called 'barema' or scale wage increases.

## 1 National Legislation

### 1.1 Brexit

On 19 February 2019, the Federal Government submitted [the draft law](#) on the withdrawal of the United Kingdom from the European Union to the Chamber of Representatives (Parliamentary Documents, Chamber of Documents, 2018-2019, No. 54-3554/001).

The present bill aims to regulate the withdrawal of the United Kingdom in case of no agreement with the European Union. The law will only enter into force if no agreement between the European Union and the United Kingdom is achieved. It is intended as a temporary answer to the main problems resulting from Brexit on issues that fall within the competence of the federal legislator. This draft law is part of a number of preparatory measures the government has taken in accordance with the requests of the European Council of 13 December 2018. The bill mainly deals with the right of residence of foreigners in the Belgian territories and the coordination of social security. On the date on which the United Kingdom will leave the EU without agreement, the United Kingdom becomes a third country. The rights of citizens will, however, be conceived based on the notion of reciprocity and giving priority to European coordination. The draft law provides that the provisions of Regulation (EC) No. 883/2004 of 29 April 2004 on the coordination of social security systems shall continue to apply in situations with foreign elements where the United Kingdom is involved.

With reference to labour market policy, the Law of 24 December 1999 to improve employment, the Federal Government introduced a policy to promote employment among youth. According to the law, employers had to employ a quota of unemployed youth (3 per cent) on the basis of a start-job agreement (so-called 'Rosetta-jobs'). On the other hand, social security contributions were reduced for insufficiently trained youth, provided the quota was respected. The starting job contract aimed to prevent youth from becoming unemployed during the first six months after entering the labour market.

Article 23 of the Law of 24 December 1999 defines people of foreign origin. In the context of the described provision, young employees of foreign origin up to 26 years are counted double. Since the United Kingdom of Great Britain and Northern Ireland will probably no longer be part of the European Union on 30 March 2019, youth with a



British nationality (or youth with at least one parent or with at least two grandparents of British nationality) will be considered youth of foreign origin (Article 8 of the Draft Bill).

The legislation section of the Council of State did not formulate negative comments on this part of the law.

This draft law forms part of a number of preparatory measures taken by the government in accordance with the request of the European Council of 13 December 2018 to speed up preparatory measures.

## 2 Court Rulings

### 2.1 Employment of foreign workers

*Constitutional Court, No. 13/2019, 31 January 2019*

On 24 August 2015, the Labour Inspectorate found that foreign workers were employed without the required documents. At the time of the infringements, these offences were punishable by two provisions with different territorial scope. On the one hand, on the basis of Article 175 of the Social Criminal Code, on account of the place where the work is carried out, and, on the other hand, on account of the place of the employer's registered office, where the employee was hired, on the basis of Article 12 of the Act of 30 April 1999 on the employment of foreign workers, such as in the version reinstated for the Brussels-Capital Region by Article 27 of the Ordinance of 09 July 2015, 'laying down the first measures for the implementation and application of the Sixth Reform of the State with regard to supervision and control in the field of employment'. According to the referring court, the Dutch-speaking Court of First Instance in Brussels, there is therefore a cumulation of rules based on different regions. However, it stated that in view of the exclusive nature of the Belgian division of powers, only one rule can apply.

This gave rise to two preliminary questions before the Constitutional Court on a possible exceeding of powers of the Brussels-Capital Region and the applicable territorial criminal sanction.

The referring court first asked whether the Brussels-Capital Region had exceeded its powers, as laid down in Article 92bis of the Special Law of 08 August 1980 Reforming the Institutions and Article 42 of the Special Law of 12 January 1989 relating to the Institutions of Brussels, in that it introduced criminal penalties in Article 12 of the Law of 30 April 1999 for infringements of the rules on the employment of foreign workers without first concluding the compulsory Cooperation Agreement between the Federal Authority and the other Regions referred to in Article 92bis(3)(c) of the Special Law of 08 August 1980.

[The Constitutional Court answered](#) this question in the negative and referred to the fact that, in accordance with Article 6(1), IX, 4<sup>o</sup> of the Special Law of 08 August 1980 Reforming the Institutions, the Federal Authority remains competent for the regulation and the Regions remain competent for its application with regard to the issue of a work permit, depending on the specific residence of the person concerned and the exemptions from professional cards linked to the specific residence of the person concerned. In this context, the Federal State, the Walloon Region, the Flemish Region, the Brussels-Capital Region and the German-speaking community have concluded a Cooperation Agreement on the coordination between the policy on admissions to employment and the policy on residence permits and the standards of employment and residence of foreign workers. This cooperation agreement does not concern the introduction of criminal sanctions by the parties concerned. According to the Court, the obligation to conclude a Cooperation Agreement envisaged by the special legislator

does not relate to the Regions' power to legislate in criminal matters regarding the employment of foreign workers. Consequently, the provision at issue is in accordance with Article 92bis(3)(c) of the Special Law of 08 August 1980 Reforming the Institutions.

Moreover, the referring court asked which criminal sanctions, if no compulsory Cooperation Agreement was required, would apply to a natural person resident in the Brussels-Capital Region and a legal person with its registered office in the Brussels-Capital Region—but with operating offices in both the Flemish and the Walloon Regions—to whom an infringement of the rules on the employment of foreign workers is attributed on the grounds that it was established that those persons employed workers in the territory of the Flemish Region.

The Constitutional Court found that the various legislators had not established any connecting factors on the basis of which their penal provisions would or would not be applicable. To be able to form an opinion on the localisation of a regulation within the territorial area of competence allocated by the Constitution and by the Special Laws, the Court stated that account must be taken of the nature and subject matter of the material competence allocated. According to Article 6, § 1, IX, 3° of the Special Law of 08 August 1980, the employment of foreign workers is a regional competence. In light of this fact, Article 175 of the Social Criminal Code and Article 12 of the Act of 30 April 1999 must be interpreted as applying respectively to the employment of foreign workers in the Flemish Region or the Brussels-Capital Region, regardless of the place where the employer's registered office or place of business is located, if it differs from the place of employment of the foreign worker. On this interpretation, the Court considered that the penal provisions are compatible with the exclusive territorial division of powers laid down in the Belgian Constitution and Special Laws provisions.

### 3 Implications of CJEU rulings and ECHR

Nothing to report.

### 4 Other relevant information

#### 4.1 Agreement between the social partners on limiting wage increases

The social partners concluded [a draft intersectoral professional agreement](#) on the night of 25 to 26 February 2019. This draft agreement is not a draft of a legally binding collective bargaining agreement (CBA). The main lines are as follows. First and foremost, a maximum margin for increasing labour cost developments for the period 2019-2020 of 1.1 percent was agreed. In addition, minimum wages will also increase by 1.1 percent on 01 July 2019, on top of the index. A working group has been set up to formulate proposals to increase the guaranteed average minimum monthly wage. Furthermore, there will be a higher financial contribution from employers to the costs of public transport incurred by employees. The fixed amounts in the intersectoral CBA No. 19octies, concluded in the National Labour Council on 20 February 2009 on the financial contribution by employers to the price of transport of workers, will be increased to 70 per cent and from 01 July 2020, the collective agreement will also apply to commuter traffic of less than five kilometres. The number of voluntary overtime hours will be increased from 100 hours to 120 hours. By 30 September 2019, an inter-professional arrangement will be sought to find an alternative solution for the use of part of the severance pay, as provided for in Article 39ter of the Employment Contracts Law of 03 July 1978. With regard to unemployment benefits



with a supplementary company allowance and time credit for older employees, the social partners refer to the joint agreement of 18 December 2014. Finally, social security benefits will also increase. The lowest benefits will increase by 2.4 per cent, while the highest will increase by 1.1 per cent. The agreement is now under political debate.

On the basis of the technical report of the Central Council for Business of 16 January 2019, updated on 22 February 2019, with new figures of the European Commission on economic growth in neighbouring countries and with new inflation estimations from the Planning Bureau and the National Bank of Belgium, the social partners had previously calculated the maximum margin of the wage increases at 0.8 per cent for the period 2019-2020. The negotiations between labour and management led to a national strike organised by the trade unions on 13 February 2019, which resulted in a larger margin of increase of 0.3 per cent.

The background of this agreement is the legal framework for salary increase moderation. The wage standard (the maximum margin for the development of labour costs) is set every two years and determines how much labour costs may increase. This is contained in the Law of 26 July 1996 on the promotion of employment and the preventive protection of competitiveness (hereinafter referred to as the Maximum Wage Law), as amended by the Law of 19 March 2017 amending the Law of 26 July 1996 on the promotion of employment and the preventive protection of competitiveness, which creates the possibility to preventively adapt the wage cost trend in Belgium to the expected trend of the main trading partners Germany, the Netherlands and France. The wage norm acts as a framework for the biennial inter-professional wage negotiations in the sectors and companies.

The Law of 06 July 1996 determines a number of elements which will not be taken into account to calculate whether or not the wage norm was exceeded. It is indeed important to note that the wage norm law stipulates that automatic indexations of wages in Belgium are always guaranteed in the event of a rise in consumer prices. This is also the case for so-called 'barema or scale wage increases'. The law defines a barema (or scale) of salary increases as 'existing pay increases due to seniority of service, age, normal promotions or individual category changes, established by collective bargaining agreements' (Article 2).

# Croatia

## Summary

A Plan adopted by Parliament aims to bring several legal areas in line with the *aquis communautaire* in 2019.

## 1 National Legislation

### 1.1 Approximation of legislation with the *aquis communautaire*

The Parliament of the Republic of Croatia has adopted the [Plan on approximation of legislation with the \*aquis communautaire\* in 2019](#) (Official Gazette No. 16/2019). Among others, the Aliens Act and the Act on Posting of Workers in the Republic of Croatia shall be adopted in 2019.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Cyprus

## Summary

- (I) The Administrative Court has ruled that one-off lump sum retirement benefits are property rights protected by national, ECHR and EU law.
- (II) Major trade union associations have challenged the unilateral changes to employment conditions in the public health sector.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Civil service retirement benefits

*Administrative Court, No. 6360/2013 – 6362/2013 and 38/2015, 18 February 2019, Lambrou and others*

In [joined cases Lambrou and others](#), the applicants, who were retired civil servants, challenged the decision before the Administrative Court to reduce their retirement lump sum benefits as a result of the amendment to the pension law as part of the austerity measures taken after the financial and banking crisis in 2012 (Article 7 of Law 216(I)/2012, *περί Συνταξιοδοτικών Ωφελημάτων Κρατικών Υπαλλήλων και Υπαλλήλων του Ευρύτερου Δημόσιου Τομέα περιλαμβανομένων και των Αρχών Τοπικής Αυτοδιοίκησης (Διατάξεις Γενικής Εφαρμογής) Νόμου του' 2012*). They argued that the law is unconstitutional, invoking Articles 1A, 23, 24, 26, 28 and 146, as well as Article 14 of the ECHR, Article 1 of the First Protocol of the ECHR Άρθρο 1, the principle of proportionality, the rule of law and the legally protected trust and legal certainty. The Court considered it a violation of the right to property, as the above benefit amounts to a property right protected by Article 23 of the Constitution.

The Court relied on the ECtHR case *Azinas v. Cyprus* (No. 56679/00, 28 April 2004), and cited the following section from that case:

*"The applicant submits that pension constitutes an integral part of the employment contract that the Government offers to all of its employees, namely the civil servants. A civil service position is accompanied by a compulsory retirement scheme, which includes a monthly pension and a lump sum. This is part of the overall employment package which the Government undertakes to finance and pay at the end of one's employment; civil servants contribute with their years of service and by having a certain amount cut off from their salary by way of taxes.*

*31. The applicant further submits that Law 9/67 amended Section 3 (1) of Cap. 311 and the Regulations issued under Cap. 311 by imposing an obligation to grant pension to every officer holding a pensionable office under the Government of Cyprus.*

*32. The Court notes that the right to a pension is not, as such, guaranteed by the Convention. However, the Court also reiterates that, according to the case-law of the Convention institutions, the right to a pension which is based on employment can in certain circumstances be assimilated to a property right.*

33. This may be the case where special contributions have been paid: in its judgment in the case of *Gaygusuz v. Austria* (16 September 1996, Reports of Judgments and Decisions 1996-IV, §§ 39-41), the Court held that entitlement to a social benefit is linked to the payment of contributions, and when such contributions have been made, an award cannot be denied to the person concerned. That case concerned the issue of emergency aid granted by the State to people in need, which, the Court held, was a pecuniary right for the purposes of Article 1 of Protocol No. 1. The Court found a violation of Article 14 of the Convention combined with Article 1 of Protocol No. 1 because the Government had refused to grant the award on grounds of nationality.

34. This may also be the situation where an employer, as in the present case, has given a more general undertaking to pay a pension on conditions which can be considered to be part of the employment contract (No. 12264/86, *Sture Stigson v. Sweden*, European Commission of Human Rights, decision of 13 July 1998, unpublished). Having regard to the relevant provisions of the Pension Law, Cap.311, in particular Section 6 (f), the Court notes that the applicant, when entering the public service in Cyprus, acquired a right which constituted a "possession" within the meaning of Article 1 of Protocol No. 1. This conclusion is reinforced by the revised version of section 79(7) of the Public Service Law No.33/67, which now provides that a pension will be paid to the wife and children of a dismissed public servant, as though he had died on the date of his dismissal.

[...]

However, the imposition of this sanction entailed automatically, by application of Section 79(7), the forfeiture of the applicant's retirement benefits. Whilst the imposition of the sanction may be said to be aimed at protecting the public and safeguarding its trust in the integrity of the administration, in the Court's view, the retrospective forfeiture of the individual's pension cannot be said to serve any commensurate purpose."

Moreover, the Administrative Court referred to the Republic of Cyprus Supreme Court case of *Koutselini and others v. The Republic* (No. 740/11 and others, 17 October 2014), which ruled that pension rights are protected property rights.

Finally, the Court cited and relied on the jurisprudence of the CJEU that protects the general principle of trust and legal certainty as a fundamental principle of EU law that must be protected, as the citizen cannot be subjected to situations where the administration, invoking public interest, all of sudden changes the legal status. Hence, the administration and the legislator are required to at least provide for transitional arrangements.

### 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 Social partner consultation in the health sector

The two largest trade unions PEO and SEK issued statements arguing that the Council of Ministers' decision on healthcare plans in public law bodies and local authorities is arbitrary and unilateral as it undermines social dialogue and collective bargaining. This was done in anticipation of the long-awaited General Health System (hereinafter: GESY), which will be gradually implemented, starting from June 2019 to 2020.



The trade unions consider the existing employee benefits included in collective agreements for the welfare and health care of employees that exceed the employers' contribution to the GESY. They consider that the decision of the Council of Ministers is a unilateral circumvention of statutory employment conditions and calls on the government to withdraw its decision and engage in a dialogue to find mutually acceptable solutions to the problem.



## Czech Republic

### Summary

- (I) Provisional arrangements for the eventuality of a 'no-deal Brexit' have been enacted.
- (II) The 3-day waiting period for sickness-related benefits has been abolished.
- (III) A reform limiting the application of working time regulations to academic workers is highly controversial.
- (IV) The Constitutional Court has refused to recognise a prohibition of 'discrimination by association' in employment.
- (V) The Supreme Court's jurisdiction on wage discrimination was applied in relation to public sector pay tariffs for the first time.

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## 1 National Legislation

### 1.1 Provisional arrangements for the eventuality of 'no-deal brexit'

The [Draft Act](#) on Adjustments of Certain Relationships in Connection with the United Kingdom of Great Britain and Northern Ireland Leaving the European Union, previously referred to in Flash Report No. 01/2019, has entered the legislative procedure. It was approved by the Senate on 27 February 2019. The preliminary effective date is set to 'the day upon which TEU and TFEU cease to be applicable, under the condition that no deal is reached between the EU and the UK'.

### 1.2 Sickness leave; working time

[Act No. 32/2019 Coll.](#) amending the Labour Code, previously referred to in Flash Reports Nos. 09/2018 and 01/2019, has been published. Although the Act was primarily meant to abolish the initial 3-day waiting period in case of employees' temporary incapacity for work, several MPs added a number of provisions on the working hours of academic workers prior to the Act being approved by the Chamber of Deputies (thus amending Act No. 111/1998 Coll. on Higher Education).

The new provisions state that the employer may only schedule and record that part of working time during which academic workers perform 'direct pedagogical activities'. The employer may not, however, record other working time activities (including scientific research, development, innovation, artistic and other activities) which academic workers schedule themselves and perform at the place of their choosing. These provisions attached to the draft Act were proposed (and passed) without being discussed with the Ministry of Labour and Social Affairs. No comment procedure has been conducted in connection with the relevant provisions.

Other provisions attached concern cost reimbursement. If costs arise during the performance of work by the academic worker outside the employer's workplace (in cases in which the worker unilaterally determines the place of performance of work), such costs are not considered to be connected to the performance of the dependent work and the worker is not reimbursed (unless otherwise agreed with the employer).

Act No. 32/2019 Coll. was published on 07 February 2019 with the effective date set to 01 July 2019.



### 1.3 Civil Service

Act No. 35/2019 Coll. amending Act No. 234/2014 Coll. on Civil Service, as amended, and Act No. 150/2017 Coll. on Foreign Service, which was discussed in Flash Reports Nos. 01/2018 and 01/2019, [were published](#) on 14 February 2019, with the effective date set to 01 January 2019.

## 2 Court Rulings

### 2.1 Discrimination by association

*Constitutional Court, No. II. ÚS 3464/18, 27 November 2018*

The Constitutional Court has [ruled](#) that 'discriminatory treatment of one person cannot constitute indirect discrimination against another within the meaning of the relevant legislation.' The decision was issued on 27 November 2018 under file No. II. ÚS 3464/18.

An employee (a teacher) filed a lawsuit against his employer, stating that the termination of his employment relationship due to organisational reasons was invalid. He claimed that his redundancy was a result of discriminatory treatment against one of his pupils and thus constituted indirect discrimination against himself.

The aforementioned pupil wanted to continue her studies despite her pregnancy, however, she was not allowed to do so. Since this affected the number of lessons the employee was in charge of as a teacher, the employee suggested that the entire situation had been the result of a deliberate effort on the employer's part to dispose of the employee. Since a seemingly neutral procedure deliberately gave rise to his redundancy, the employee claimed that the situation had amounted to discrimination against him.

The Constitutional Court, however, did not agree with employee's interpretation and rejected his petition. The Constitutional Court stated in an *orbiter dictum* (perhaps too rashly) that even if the pupil had been discriminated against, this could never constitute discrimination against the employee.

### 2.2 Wage discrimination in the public sector

*Supreme Court, No. 21 Cdo 2262/2018, 28 February 2018*

The Supreme Court has [ruled](#) that

*"different (unequal) treatment of employees remunerated with public sector pay may include a situation in which an employer does not assign an employee – as opposed to other employees performing the same work or work of the same value – into a pay class or pay grade in accordance with relevant legislation as well as an opposite situation in which an employee is assigned into a pay class and pay grade in accordance with the law, however, other employees performing the same work or work of the same value are assigned into higher pay class or pay grade."*

The decision was issued on 28 November 2018 under file No. 21 Cdo 2262/2018.

An employee of the Department of Building Preparation brought an action against her employer on the grounds of discrimination and unequal treatment in remuneration. Among other things, the employee claimed that she was classified in a different pay class than employees performing work of the same complexity, responsibility and difficulty. Nevertheless, the lower courts ruled against the employee, stating that she had not sufficiently substantiated her claim of differentiated treatment in comparison

to other employees. The Supreme Court held that the lower courts had not sufficiently addressed the issue of (non-)existing differences between the work of employees of differently assigned pay grades/classes, nor had they asked the employee to supply further evidence in accordance with Section 213b (1) of the Civil Procedure Code.

The Supreme Court also expressly stated that public sector pay cannot be determined in any other way, in a different composition and amount other than that stipulated in the Labour Code and legislation issued for its implementation, unless otherwise provided by law. Differences in remuneration of public sector employees, which have no basis in this legislation, are thus considered unequal treatment.

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

Nothing to report.

### **4 Other relevant information**

Nothing to report.

## Denmark

### Summary

An industrial arbitration ruling ordered a fine to be paid to a trade union by a posting entity that had disregarded minimum rates of pay, pensions and holiday payments under the applicable collective agreement.

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### 1 National Legislation

Nothing to report.

### 2 Court Rulings

#### 2.1 Posting of workers

*Industrial Arbitration ruling FV 2018.0060*

The posting entity in this case was penalised for non-payment of wages, pension payments and holiday pay determined by the applicable collective agreement. None of the posted workers were members of the trade union that was party to the agreement. The fine was calculated on the basis of the differences in payments, i.e. the savings of the employer for not conforming with the agreement and making incorrect payments.

The judgment is available [here](#).

### 3 Implications of CJEU Rulings and ECHR

Nothing to report.

### 4 Other relevant information

Nothing to report.

# Estonia

## Summary

(I) The average wage in Estonia in 2018 has increased by 7.3 per cent compared to 2017 and amounted to EUR 1 310 (gross) per month.

(II) The Supreme Court found that to determine which labour legislation will be applicable when working abroad, it is necessary first to establish the employee's customary place of employment in accordance with the Rome I regulation. The PWD does not apply when the employee has never worked in the sending country.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Employment conditions working abroad

*Supreme Court, No. 2-17-458, 13 February 2019*

In recent case law, the Estonian Supreme Court ('*Riigikohus*') dealt with the application of Directive 96/71/EC and Regulation (EC) No. 593/2008 on posted workers (hereinafter: Rome I Regulation). The main legal question concerned clarification whether the relevant case involved the posting of workers and what employment conditions would be applicable if this was not a case of posting.

The employer was an Estonian company and the employee was working in Sweden. The tasks in Sweden were carried out for a certain period. In case certain tasks had to be performed, the employee was sent back to Sweden again. The wage was paid in accordance with Estonian legislation, not in accordance with the applicable Swedish collective agreements.

The parties to the employment contract stated that Estonian legislation should apply. The Supreme Court did not take this agreement into consideration, because, the employee had never worked in Estonia before and his customary place of employment was in Sweden. As his customary workplace was in Sweden, the Swedish legislation and collective agreements were applicable in accordance with the Rome I Regulation.

Consequently, the Estonian Supreme Court [declared](#) that this was not a case of posting. As the employee had never worked in Estonia before and only performed his tasks in Sweden, this was not a case of posting in the meaning of Directive 96/71/EC. Instead, the employment conditions must be compatible with the legislation determined by reference to the Rome I Regulation.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 Average wage

The Estonian Statistical Board has published the [average wage in Estonia in 2018](#), which increased in the fourth quarter and also in absolute terms for the year 2018.



In the fourth quarter, the average wage was EUR 1 384 (gross) and for 2018, the average wage was EUR 1 310 per month. The average wage per hour was EUR 7.58 gross in the last quarter and EUR 7.56 gross in 2018. The rise compared to 2017 is 7.3 per cent. In 2017, the average monthly wage in Estonia was EUR 1 271 (gross). The highest average wages were paid in the finance and insurance sectors (EUR 2 172 and EUR 2 154, respectively), the lowest in the accommodation and food service sector (EUR 854 gross).

The monthly minimum wage for 2019 is EUR 540 gross per month for full-time work (40 hours per week).

# France

## Summary

- (I) An ordinance on the implementation of the Posting Directive was passed by the Labour Ministry.
- (II) Several important decisions were rendered on harassment, overtime and, again, the posting of workers.

## 1 National Legislation

### 1.1 Posting of workers

On 20 February 2019, the Minister of Labour presented an ordinance ([Ordinance No. 2019-116 of 20 February 2019](#)) transposing [Directive 2018/957/EU](#) 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. These provisions will enter into force on 30 July 2020, in accordance with the date of entry into force provided for in the Directive. However, road transport undertakings will continue to be governed by the currently applicable provisions, as also provided for in the European text, which allows to take into account the specificities of the road transport sector.

#### 1.1.1 Temporary employment

The Directive lays down new information obligations by distinguishing between the case of a temporary employment agency established outside France, which posts an employee to a French user company, on the one hand, and the case of a temporary employment agency established outside France, which posts an employee to a foreign user company which occasionally carries out an activity in France, on the other. The current obligations are clarified and partly simplified in the Labour Code.

In the case of a user undertaking established outside France, the obligation of prior declaration attesting compliance with the employer's information obligations by the user company is replaced with an obligation of the user undertaking to provide information to the temporary employment agency on the rules applicable to posted employees. The list of information to be provided will be specified by order of the Minister of Labour.

In the case of a user company established in France, a new information requirement has been introduced whereby the user undertaking informs the foreign temporary employment agency of the rules applicable to remuneration during the period of posting ([Articles L. 1262-2](#) and [L. 1262-2-1](#) amended of the French Labour Code).

These provisions are intended to clarify the nature of each company's (employer and user company) obligations and to ensure more systematic respect for the rights of posted employees.

#### 1.1.2 Equal treatment

The rules on the equal treatment of posted workers are supplemented, on the one hand, by the concept of remuneration stipulated in the Directive and, on the other hand, by allowances to be paid as reimbursements of expenses incurred by the employee during the posting. The objective is to ensure the effectiveness of the principle underlying the revision of the 1996 European Directive, according to which

the posted employee must receive remuneration equal to that which a local employee would receive in an equivalent position, this principle of equal treatment being guaranteed in [Article L. 1262-4](#), I of the French Labour Code.

### 1.1.3 Posting

The Directive creates a new status of long-term posted employees. The current provisions of the Labour Code are supplemented accordingly to determine the applicable regulations. These comprise the calculation of the duration of posting, taking into account replacements for the same post and the workplace of posted employees, and the procedure for extending the posting beyond 12 months under the same conditions, the detailed implementing rules which will be specified by decree. In accordance with the Directive, all working and employment conditions provided for in the Labour Code apply to these employees, with the exception of provisions relating to the conclusion and termination of the employment contract ([Article L. 1264-4](#), II amended of the French Labour Code).

The aim is to guarantee the temporary nature of the posting, which is always linked to the provision of services in France. Where the duration of the posting is very long, the given employee must be able to enjoy the same rights as a local employee, in addition to the employee's guaranteed rights. Moreover, in the event of fraud, the situation may be reclassified in accordance with the French Labour Code to exclude the application of the rules on posting, regardless whether the duration of the posting exceeds 12 months or not.

### 1.1.4 Sanctions

New sanctions are to ensure the effectiveness of the new measures.

The list of breaches subject to an administrative penalty is supplemented by the employer's failure to comply with the obligation to declare the extension of the long-term posting beyond 12 months and the reason therefore ([Article L. 1264-1](#) amendment to the French Labour Code). In addition, provision is made for the possibility of imposing an administrative fine on the user company in the event of failure to comply with the obligation to provide information, where the employer does not comply with the applicable rules on remuneration ([Article L. 1264-2](#), I amendment to the French Labour Code). Finally, the administrative authority is bound to take into account the good faith of the offender when imposing the penalty and, where appropriate, when setting the amount of the fine ([Article L. 1264-3](#), paragraph 3, amendment to the French Labour Code), in accordance with the requirements of the Directive.

## 2 Court Rulings

### 2.1 Information and consultation

*Labour Division of the Court of Cassation, No. 18-14.520, 19 December 2018*

The Dutch company Gemalto NV, the parent company within the Gemalto group, was the subject of a takeover bid by Thales in December 2017. The central committee of the French subsidiary Gemalto SA requested information on this offer at a meeting on 12 December 2017 devoted to the reorganisation of the company accompanied by a job protection plan covering 288 positions. In particular, the Committee wished to know the consequences of this takeover bid on the ongoing reorganisation and redundancy project for economic reasons. As the French company did not comply with the committee's request, the committee referred the matter to the Nanterre Regional

Court on 19 February 2018 for an order, requiring Gemalto SA to provide it with information relating to this offer. By order of 22 March 2018, the President of the Court granted the request of the Central Works Council on the grounds that Gemalto SA, 99.99 per cent owned by the parent company being directly affected by the takeover bid formed by Thales, was required to provide information to the Central Works Council under Articles L. 2323-35 and L. 2323-39 of the Labour Code. The Court noted that

*"the CCE of Gemalto SA justifies the impact on employment that may result from this offer within Gemalto SA, which is not disputed to be the subject of a job protection plan for which Thales has formalised proposals for reclassification through a mobility agreement".*

Gemalto SA appealed to the Supreme Court and essentially argued that, pursuant to Articles L. 2323-35 and L. 2323-39 of the Labour Code, interpreted in the light of Article 6 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004, only the works council to which the takeover bid relates can claim a right to information and consultation. The Court of Cassation basically supported this interpretation of the Directive because the provision only concerns the committees of the company subject to the takeover bid, without any ambiguity.

However, the Court of Cassation did not overturn the contested decision. First, it noted that Article 6 of Directive 2004/25/EC does not affect the general right of employees in the European Community to be informed and consulted. It then pointed out that this right is organised in groups with a Community dimension by consulting the European Works Council and consulting the national committees in accordance with an articulation fixed by agreement. It concluded that

*"en l'absence de comité d'entreprise européen instauré par un accord précisant les modalités de l'articulation des consultations en application de l'article L. 2342-9, 4°, du code du travail, l'institution représentative du personnel d'une société contrôlée par une société-mère ayant son siège dans un autre Etat membre de l'Union européenne doit être consultée sur tout projet concernant l'organisation, la gestion et la marche générale de l'entreprise, notamment sur les mesures de nature à affecter le volume ou la structure des effectifs résultant des modifications de l'organisation économique ou juridique de l'entreprise, y compris lorsque une offre publique d'acquisition porte sur les titres de la société-mère".*

Finally, the Court of Cassation reaffirmed the fundamental right of employees to have precise knowledge of any strategic decision that may have repercussions on their employment, regardless of the existing structural and legal divisions within groups of companies with a European dimension. It should be noted that in the event of a transition to a social and economic committee (CSE), the solution reached by the judgment under consideration remains applicable with regard to the general powers of the new CSE, which essentially include the powers of the former works councils pursuant to Article L. 2312-8 of the Labour Code.

The judgment is available [here](#).

## 2.2 Discrimination and harassment

*Labour Division of the Court of Cassation, No. 17-28.905, 30 January 2019*

In the present case, an employee, an agent in a sports association, was violently insulted by one of the volunteers during an evening organised by the association, while she was working in the kitchen of the restaurant. She was also the victim of 'salad sprays, fries, fresh eggs' from other volunteers.



The Court of Appeal noted that her superior, who was present on the premises, did not react. According to the findings of the Court of Appeal, the employee suffered discriminatory violation because of the sexist connotation of the insults, the entire scene constituting an 'attack on the person likely to create a hostile, degrading, humiliating or offensive environment'.

Nevertheless, the Court of Appeal rejected the employee's claim for damages based on the employer's violation of safety obligation. In its view, 'there is no evidence that the volunteers were under the legal subordination of the association', so the employer's liability did not apply in these circumstances.

Moreover, the judges of the merits pointed out that the employer did not remain 'without reaction' since an internal investigation was carried out and staff were invited to 'take all necessary precautions in their relations with the employee'.

In overturning this decision, the Court of Cassation noted the two elements that had led to the association's liability: the evening was organised by the association and the attack took place in the presence of an employee of the company, without the latter taking action. It does not matter that the aggressors were external to the company and that the person in charge had no particular authority over them.

*"Qu'en statuant ainsi, par des motifs impropres à caractériser l'absence d'autorité de droit ou de fait exercée sur la salariée par les auteurs d'agissements discriminatoires alors qu'elle avait constaté que l'insulte à connotation sexiste, proférée par un bénévole, et le jet par d'autres de détritus sur la salariée avaient eu lieu à l'occasion d'une soirée organisée par l'employeur dans les cuisines du restaurant de l'association en présence d'un salarié de l'entreprise, tuteur devant veiller à l'intégration de la salariée titulaire d'un contrat de travail s'accompagnant d'un contrat d'aide à l'emploi, sans que celui-ci réagisse, la cour d'appel, qui n'a pas tiré les conséquences légales de ses constatations, a violé les textes susvisés".*

As part of its safety obligation, an employer may not leave an employee in a situation of discriminatory behaviour that creates a hostile and humiliating environment on the part of persons exercising de facto or de jure authority.

The judgment is available [here](#).

## 2.3 Overtime

*Labour Division of the Court of Cassation, No. 17-19.393, 23 January 2019*

In the present case, an employee hired on a modulated part-time basis, who reached the legal working time during a week in December 2008 following the performance of an additional work assignment provided for in a collective agreement, requested that her contract be reclassified as a full-time employment contract. The employer argued that this additional working time, which was based on the voluntary nature of the person concerned, must not be included in the employee's working time calculation.

The Rennes Court of Appeal, in its decision confirmed by the Court of Cassation, ruled in favour of the employee.

According to the Court, [Article L. 3123-25](#) cannot be derogated from in its wording prior to [Act No. 2008-789](#) of 20 August 2008:

*"all hours worked, whether imposed by the employer or provided for by an amendment to the part-time employment contract pursuant to a collective agreement, must be included in the working time calculation".*

Therefore the trial judges decided that the additional tasks performed by the employee should be included in the calculation of her working time. As the additional

working hours had increased her working hours to the legal working time in December 2008, 'the employment contract was to be reclassified as a full-time employment contract as from that date'.

*"Mais attendu, d'abord, que selon l'article L. 3123-25, 5° du code du travail dans sa rédaction antérieure à la loi n° 2008-789 du 20 août 2008, la convention ou l'accord collectif organisant le temps partiel modulé prévoit les limites à l'intérieur desquelles la durée du travail peut varier, l'écart entre chacune de ces limites et la durée stipulée au contrat de travail ne pouvant excéder le tiers de cette durée ; que la durée du travail du salarié ne peut être portée à un niveau égal ou supérieur à la durée légale hebdomadaire ;*

*Attendu, ensuite, qu'il ne peut être dérogé aux dispositions d'ordre public des articles L. 3123-14 et L. 3123-25, 5° du code du travail dans leur rédaction antérieure à la loi n° 2008-789 du 20 août 2008 ; qu'il en résulte que toutes les heures effectuées, qu'elles soient imposées par l'employeur ou qu'elles soient prévues par avenant au contrat de travail à temps partiel en application d'un accord collectif, doivent être incluses dans le décompte de la durée du travail ;*

*Attendu, encore, qu'ayant exactement retenu que les prestations additionnelles devaient être incluses dans le décompte du temps de travail et constaté que les heures effectuées par la salariée au mois de décembre 2008 avaient eu pour effet de porter la durée du travail accomplie à hauteur de la durée légale du travail, la cour d'appel, en a déduit à bon droit, sans avoir à procéder à une recherche que ses constatations rendaient inopérante, que le contrat de travail devait être requalifié en contrat de travail à temps complet à compter de cette date".*

Part-time hours worked, whether imposed by the employer or provided for in a collective agreement, must be included in the employee's working time calculation.

The judgment is available [here](#).

## 2.4 Dismissal

*Labour Division of the Court of Cassation, No. 17-31.473, 30 January 2019*

In the present case, an employee who had to interrupt work due to illness, was dismissed by her employer because of her prolonged absence, disrupting the proper functioning of the company. Contending that these absences were due to acts of harassment she had suffered, the employee brought an action before the labour court to annul her dismissal.

In its defence, the employer argued that the employee's dismissal was solely based on the objective situation of the company, which had been disrupted by her prolonged absence.

The Court of Cassation dismissed the employer's arguments and stated in a principled explanation that:

*"Mais attendu que lorsque l'absence prolongée du salarié est la conséquence du harcèlement moral dont il a été l'objet, l'employeur ne peut se prévaloir de la perturbation que l'absence prolongée du salarié a causé au fonctionnement de l'entreprise ;*

*Et attendu qu'ayant retenu l'existence d'un harcèlement moral ayant eu des répercussions sur l'état de santé de la salariée, dont elle avait constaté l'absence de l'entreprise en raison de plusieurs arrêts de travail, et ayant fait ressortir le lien de causalité entre le harcèlement moral à l'origine de l'absence*

*de la salariée et le motif du licenciement, la cour d'appel, sans renverser la charge de la preuve, a légalement justifié sa décision”.*

Since a causal link between the employee's absences, caused by acts of harassment, and the dismissal had been found by the judges on the merits, the High Court ruled the dismissal void.

The judgment is available [here](#).

### *Conflicting decisions on damages for unlawful dismissal*

The latest version of [Article L. 1235-3](#) of the French Labour Code, based on the 'Macron Ordinances', has recently been the subject of major dispute, with several labour tribunals issuing conflicting decisions. The article limits a judge's ability to determine the compensation of an employee whose dismissal has been recognised as having no 'real and serious' cause. It caps the damages awarded at an amount between 0.5 months' salary (for an employee with less than one year of continuous service) and 20 months' salary (for an employee with more than 29 years of continuous service). However, this system is not applicable in a number of cases, particularly where the dismissal is declared null and void due, for example, to a 'violation of a basic human right', an 'act of harassment', or its 'discriminatory' nature.

However, in a series of decisions issued in December 2018 and January 2019, labour courts have ruled that this system conflicts with several international conventions applicable in France. Even if the Constitutional Council approved it, both in principle (C.C., [2017-751 DC of 07 September 2017](#)) and in its implementation (C.C., [2018-761 DC of 21 March 2018](#)), the concept of a cap on compensation for damage caused by the fault of the employer, it is not up to the Council to ensure compliance of this system with the international agreements ratified by France. It is the judges who are responsible for checking that the system established by the labour tribunal complies with the international conventions applicable in France.

[Article 10 of Convention 158](#) of the International Labour Organization stipulates that a judge who finds that a dismissal is unjustified, but does not propose reinstatement of the employee, must be able to order the 'payment of adequate compensation or such other relief as may be deemed appropriate'. Similarly, Article 24 of the European Social Charter provides for the 'the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.'

Considering these stipulations, two labour tribunals (Le Mans and Caen, the latter being ruled by a professional judge) adopted the applicable scale, considering that it provided for 'appropriate' compensation for damages. By contrast, the labour tribunals of Troyes ([CPH de Troyes, 13 décembre 2018, RG F 18/00036](#)), Amiens ([CPH d'Amiens, 19 décembre 2018, RG F 18/00040](#)), Lyon ([CPH de Lyon, 21 décembre 2018, RG F 18/01238](#)) and Le Mans ([CPH du Mans, 26 September 2018, RG F 17/00538](#)) decided, in highly publicised decisions, not to apply the mandatory scale stipulated by Article L. 1235-3. As a result, they granted compensation in excess of the legal maximum. None of these five cases fell into the provided categories allowing a judge to exceed this maximum.

It will be up to the Court of Appeal and then to the Court of Cassation, France's Supreme Court, to decide whether it is appropriate to continue to apply this system or whether the international conventions ratified by France require that it be overruled.

## **2.5 Posting**

*Labour Division of the Court of Cassation, No. 17-17.244, 23 January 2019*

An employee had requested and obtained recognition of the existence of an employment contract binding him to the parent company, and therefore reproached the latter for not having respected its obligations to reinstate and reclassify him following the termination of his employment contract with the foreign subsidiary.

To contest this claim, the parent company submitted that it had not provided a new job or even taken any steps to that end.

The Court of Cassation rejected this reasoning and stated that

*"Mais attendu, d'abord, qu'hors toute dénaturation, la cour d'appel a estimé que par l'acceptation par M. Y... de l'offre d'engagement qui lui avait été faite le 10 novembre 2011 par la société Newrest Group International, un contrat de travail s'était formé avec cette dernière antérieurement à la conclusion, le 1er décembre 2011, d'un contrat de travail avec la société Newrest Angola auprès de laquelle le salarié devait être détaché ;*

*Attendu, ensuite, que le seul fait que le salarié n'ait pas, avant son détachement, exercé des fonctions effectives au service de l'employeur qui l'a détaché ne dispense pas celui-ci de son obligation d'assurer son rapatriement à la fin du détachement et de le reclasser dans un autre emploi en rapport avec ses compétences ; qu'ayant constaté que la société mère n'avait pas procuré de nouvel emploi au salarié, ni même effectué la moindre démarche à cet effet, la cour d'appel en a exactement déduit que faute de reclassement, conformément aux dispositions de l'article L. 1231-5 du code du travail, la rupture du contrat de travail s'analysait en un licenciement sans cause réelle et sérieuse".*

Thus, according to the Court of Cassation, the fact that the employee had not, prior to his posting abroad, perform effective functions in the service of the employer who posted him does not exempt him from his obligation to ensure his repatriation at the end of the posting and to reclassify him in another post that corresponds to his skills and qualifications. As the parent company had not provided the employee with a new job or even taken any action to this end, the termination of the employee's employment contract must be considered a dismissal without real and serious cause.

*Labour Division of the Court of Cassation, No. 17-24.036, 09 January 2019*

In the present case, an employee posted abroad for several years before being repatriated to France was, upon his return, offered the position he had held in the company before his departure. However, [Article 9 of Annex II to the national collective agreement of 13 March 1972](#) for engineers and managers in the metallurgy sector provides that engineers and managers repatriated to mainland France after having performed duties abroad must be assigned to jobs that are as compatible as possible with their duties prior to their repatriation. The employee contended that the employer had not respected the contractual obligations by not taking into account the employee's last functions abroad.

First, the Paris Court of Appeal ruled in favour of the employer on the grounds that the proposed post was the same one the employee had held before his expatriation. However, the Court of Cassation overturned this decision and stated that the trial judges should not have compared his most recent job with the one he had held in France before his expatriation, but with the functions he held in Brazil before his repatriation.

*"Attendu que pour dire que la prise d'acte par le salarié de la rupture de son contrat de travail produit les effets d'une démission, rejeter l'ensemble de ses demandes financières et le condamner au paiement d'une somme au titre de l'indemnité compensatrice de préavis non effectué, l'arrêt retient que le poste*

*proposé par l'employeur est celui que le salarié occupait dans l'entreprise préalablement à son expatriation ;*

*Qu'en statuant ainsi, alors qu'il lui appartenait de comparer le nouvel emploi non pas avec celui que l'intéressé occupait avant son expatriation mais avec les fonctions qu'il occupait au Brésil avant son rapatriement, la cour d'appel a violé le texte susvisé".*

The judgment is available [here](#).

*Council of State, No. 415818, 30 January 2019*

An Ecuadorian national had been working and residing in France for several years for a company established in Spain as a posted worker. On 16 November 2015, the Prefect of the Gard decided to hand the case over to the Spanish authorities on the grounds that on that date, he had been residing in France for more than three months without a residence permit issued by the French authorities. After neither the Nîmes Administrative Court nor the Marseille Administrative Court of Appeal had granted the employee's request to annul the order, he appealed to the Supreme Court.

[Article L. 311-1](#) of the Code of Admission and Residence of Foreign Persons and the Right to Asylum requires—subject to specific provisions of an international agreement—that any foreign national over the age of 18 who intends to stay in France for more than three months must hold a residence permit, unless she is an EU citizen or a national of another State party to the Agreement on the European Economic Area or the Swiss Confederation.

The Conseil d'État considered that

*"cette règle s'applique aux ressortissants de pays tiers, en situation régulière dans un État membre de l'Union européenne, qui sont détachés en France dans le cadre d'une prestation de service, lesquels doivent ainsi, au-delà d'une période de trois mois à compter de leur entrée en France, être munis d'un titre de séjour délivré par les autorités françaises" ;*

*[...] cette obligation, qui se rattache aux conditions générales de séjour applicables à tous les étrangers sous les réserves mentionnées à l'article L. 311-1, ne constitue pas une autorisation préalable au détachement de travailleurs sur le territoire français et ne porte pas d'atteinte injustifiée à la libre prestation de services résultant de l'article 56 du traité sur le fonctionnement de l'Union européenne".*

Thus, the Council of State did not consider the provisions of Article L. 311-1 of the Code of Admission and Residence of Foreign Persons and the Right to Asylum, which requires third-country nationals legally resident in a Member State of the European Union (EU) posted to France as part of the provision of services to be in possession of a residence permit for a period exceeding three months, are not contrary to EU law.

The judgment is available [here](#).

### 3 Implications of CJEU Rulings and ECHR

Nothing to report.

### 4 Other relevant information

Nothing to report.



## Germany

### Summary

(I) Parliament has passed a law according to which so-called risk carriers in financial institutions are treated the same way as senior executives as far as protection against dismissal is concerned.

(II) The Federal Constitutional Court has ruled on the constitutionality of a legal ban on using strike breakers hired from a temporary work agency.

(III) The Federal Labour Court has implemented the requirements that were established in the rulings of the CJEU in case C-68/17, 11 September 2018, *IR/JQ* (discrimination based on religion) and case C-684/16, 06 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (forfeiture of right to paid annual leave). The same Court has dealt with the possibility of revoking a termination agreement.

(IV) The Minister of Labour is considering to establish subcontractor liability in the area of parcel carriers.

## 1 National Legislation

### 1.1 Modification of dismissal protection of bankers

On 20 February 2019, the German Parliament passed the [Brexite Tax Accompanying Act](#) ('*Brexit-Steuerbegleitgesetz*'), which also contains regulations on protection against dismissal of so-called risk carriers in financial institutions. As announced in the coalition agreement, so-called risk carriers in financial institutions are treated the same way as senior executives as far as protection against dismissal is concerned (see also January 2019 Flash Report).

## 2 Court Rulings

### 2.1 Right to strike

*Federal Constitutional Court, 1 BvR 842/17, 25 February 2019*

Section 11 (5) sentences 1 and 2 of the Act on Temporary Agency Work ('*Arbeitnehmerüberlassungsgesetz*') contains a ban on the use of strike breakers. According to section 11 (5) sentence 1, 'the user undertaking may not allow temporary agency workers to work if their business is directly affected by industrial action'. According to section 11 (5) sentence 2, this shall not apply 'if the user undertaking ensures that temporary agency workers do not undertake activities that were previously carried out by workers who 1. are taking industrial action, or 2. have taken over activities of workers who are taking industrial action'.

In the present case, [the Court refused](#) to grant an interim injunction against the law. It stated, however, that a violation of freedom of association enshrined in Article 9 of the Constitution and of the freedom of professional and economic activity as enshrined in Article 12 (1) of the Constitution was 'in any case not manifestly excluded from the outset'.

## 2.2 Discrimination

*Federal Labour Court, 2 AZR 746/14, 20 February 2019*

[The Federal Labour Court has held](#) that a hospital which is affiliated to the Roman Catholic Church may only require loyalty and sincerity in the sense of Catholic self-understanding in accordance with their religious affiliation, if this constitutes an essential, lawful and justified professional requirement for its employees in view of the nature of the professional activities concerned or the circumstances in which they are carried out.

In the present case, the plaintiff was employed by the owner of the hospital. The employment relationship was based on the basic order of the church service within the framework of church employment relationships (*'Grundordnung des kirchlichen Dienstes im Rahmen kirchlicher Arbeitsverhältnisse'*). The plaintiff was married according to Catholic rite. After the divorce from his first wife, he married a second time. After the defendant became aware of this, it terminated the employment relationship. In its opinion, the marriage constituted a serious breach of loyalty pursuant to Art. 5 (2) of the above-mentioned basic order.

In the view of the Court, the dismissal was not 'socially justified' within the meaning of section 1 (2) of the Dismissal Protection Act (*'Kündigungsschutzgesetz'*) by reasons relating to either the behaviour or the person of the employee or by business reasons. With his remarriage, the plaintiff had neither violated an effectively agreed duty of loyalty nor a legitimate expectation of loyalty on the part of the defendant. The agreement in the employment contract of the parties that referred to the basic order was invalid pursuant to section 7 (2) of the General Equal Treatment Act (*'Allgemeines Gleichbehandlungsgesetz'*), insofar as life in an invalid marriage was determined as a serious breach of loyalty. This provision had discriminated against the plaintiff in relation to senior employees who did not belong to the Catholic Church on the grounds of their religious affiliation and thus on the grounds stated in section 1 of the Act without this being justified under section 9 (2) of the Act. In the view of the Court, this follows from an interpretation of section 9 (2) in conformity with Union law, but in any event from the primacy of application of Union law. The duty not to enter into a marriage which is invalid according to the Catholic Church's understanding of faith and the legal system was not an essential, lawful and justified professional requirement with regard to the nature of the plaintiff's activities and the circumstances in which they were carried out.

The judgment of the Court follows the decision of the CJEU (case C-68/17, 11 September 2018, *IR*). The Federal Labour Court explicitly states that the CJEU, in interpreting Directive 2000/78/EC, did not exceed its competence as the decision of the CJEU did neither amount to an 'ultra vires act' nor affected the constitutional identity of the German Constitution.

## 2.3 Annual leave

*Federal Labour Court, 9 AZR 541/15, 19 February 2019*

[The Federal Labour Court has held](#) that an employee's entitlement to paid annual leave usually expires at the end of the calendar year only if the employer previously informed her of her holiday entitlement and the expiry period, and if the employee, despite this information, did not use her rights by her own free will.

Section 7 (3) sentence 1 of the Federal Holiday Act (*'Bundesurlaubsgesetz'*) stipulates that leave not granted and taken by the end of the year expires. According to previous case law, this applied even in the event that the employee had requested the employer in good time but without success to grant her leave. Under certain circumstances, however, the employee could claim compensation for damages, which

during the employment relationship meant granting substitute leave and after termination compensation for the days of leave not taken.

The Federal Labour Court based its judgment on an interpretation of section 7 in conformity with Directive 2003/88/EC, according to which forfeiture of leave can generally only occur if the employer has, first, specifically requested the employee to take the leave and has clearly pointed out to her and in good time that the leave will otherwise expire at the end of the holiday year or transfer period.

With this judgment, the Federal Labour Court has changed its position by implementing the requirements that were set out by the CJEU (case C-684/16, 06 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*).

## 2.4 Termination agreements

*Federal Labour Court, 6 AZR 75/18, 07 February 2019*

[The Federal Labour Court has held](#) that an employee cannot revoke a contract that terminates the employment relationship (termination agreement), even if it was concluded in her private home. However, a termination agreement may be invalid if it was concluded in disregard of the principle of fair negotiations.

In the underlying case, an employee agreed to a termination agreement in her apartment that provided for immediate termination of the employment relationship without severance payment. The course of the contract negotiations was controversial between the parties involved. According to the plaintiff, she was ill on the day the agreement was concluded. She challenged the termination agreement because of error, fraudulent deception and unlawful threat and alternatively revoked it.

The Federal Labour Court was of the opinion that it is not possible to revoke a termination agreement under labour law. The Court acknowledged that the lawmaker had admittedly granted consumers a right of revocation within the meaning of section 355 of the Civil Code in accordance with section 312 (1) in conjunction with section 312g for contracts concluded outside business premises. The Court further acknowledged that employees qualified as 'consumers'. In the view of the Court, it was clear, however, that the lawmaker did not want to include termination agreements under labour law within the scope of application of sections 312 et seq. of the Civil Code.

The Court further held that a requirement of fair negotiations had to be observed before a termination agreement was concluded. This requirement is a secondary obligation under the employment contract. It is violated if one party creates psychological pressure, making it considerably more difficult for the contractual partner to make a free and considered decision on the conclusion of a termination agreement. In the view of the Court, this could have been the case here in particular if a weakness of the plaintiff due to illness had been deliberately exploited.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 Announcement of Federal Minister

Federal Labour Minister Hubertus Heil (SPD) has announced a law against dumping wages for parcel carriers. He plans to extend subcontractor liability to the parcel





industry. The large delivery services would then have to take responsibility for breaches of social security obligations by their subcontractors and pay contributions.

In this context, it may be interesting to note that the Government of Lower-Saxony has taken [an initiative](#) to introduce such subcontractor liability by following the model of the so-called Act for the protection of employee rights in the meat industry ('*Gesetz zur Sicherung von Arbeitnehmerrechten in der Fleischwirtschaft*'). Section 3 of the Act provides for subcontractor liability for social security contributions (see Federal Council, Printing Matter 92/19 of 26 February 2019). The State Government has also made it clear that in its view, it needs to be considered whether subcontractor liability could also be extended to commercial buyers of supplier services such as Amazon.

For further information, see also [Niedersächsische Staatskanzlei \(28 December 2018\)](#) and [Arte \(02 March 2019\)](#).

## Greece

### Summary

Law 4590/2019 increases the number of days of leave of civil servants due to sickness of their children and provides parental leave for both parents in the event of the adoption of children.

## 1 National Legislation

### 1.1 Parental leave

[Law 4590/2019](#) of 07 February 2019 increases the number of days of leave civil servants may take due to sickness of their children. The Law also provides that both parents are eligible for parental leave in the event of adoption of children. The previous law only provided parental leave for mothers in the event of adoption of children.

This change is linked to 2/241/EEC Council recommendation of 31 March 1992 on child care and to Directive 2010/18.

The new provision of Article 76 of Law 4590/2019 increases the paid leave granted to some categories of parents due to sickness of their children. Thus, parental leave for parents of three children has been increased from five to seven days, for parents of more than three children from five to ten days, and for single-parent families from six to eight days each year. Parental leave for parents of one or two children remains as it was at four days annually.

The new provision of Article 34 of Law 4590/2019 also provides that paid leave in the amount of three months for parents adopting minor children should be given to both parents and not only to mothers.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Hungary

## Summary

The Supreme Court has confirmed that dismissal without notice, even if for very serious misconduct, must be exercised within the 'subjective deadline' of 15 days.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Dismissal

*Kúria Mfv.I.10.129/2018*

An employee employed as an energy auditor was dismissed without notice on 01 October 2015. The employer justified the immediate dismissal on the grounds of serious misconduct of the employee on the basis of an internal investigation carried out on 28 September 2019 and referred to a loss of confidence. That internal investigation was based on a police request in June 2015, whereby a report was delivered to the employer on 15 June 2015. The report contained all the facts listed by the employer in the dismissal.

Dismissal without notice is regulated in Act I of 2012 on the Labour Code (hereinafter: LC). Section 78 Sub 1 states that an employer or employee may terminate an employment relationship without notice if the other party:

- wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or
- otherwise engages in conduct that would render the continuation of the employment relationship impossible.

Under sub 2, the right of termination without notice may be exercised within a period of 15 days of gaining knowledge of grounds justifying an immediate dismissal, and in any case, within not more than one year of the occurrence of such grounds, or in the event of a criminal offence up to the statute of limitation for criminal liability. If the right of termination without notice is exercised by a body, the date of learning of the grave misconduct shall be the date the acting body exercising the employer's rights is informed of the grounds for termination without notice.

The *Kúria* stated that the employer had not referred to the report of internal investigation and the delivery of the dismissal without notice had occurred after the 15-day limit. For this reason, the dismissal was unlawful.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Iceland

## Summary

(I) Restrictions on hiring third-country nationals in the public sector have been abolished.

(II) A dispute regarding the interpretation of a provision on strike votes has been taken to the Labour Court.

## 1 National Legislation

### 1.1 Access of TCNs to public sector employment

On 21 February Article 6(1(4)) of [Act No. 70/1996, on the rights and duties of state employees](#) was abolished. The provision had stated that in order to be hired as a public sector employee, Icelandic citizenship or citizenship of an EEA or EFTA country or the Faroe Islands was required, except for waivers to be granted in exceptional circumstances in cases of citizens of other countries. With the amendment of the Act, third-country nationals can now apply for public sector jobs in a comparable manner as they would in the private sector.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU Rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 Strike announcements

On 21 February 2019, four unions broke off negotiations with Business Iceland at the State Conciliator's Office. One of them called for a strike later that day and held a vote on the strike, which ended on 28 February. The strike is due to take place on 08 March. Business Iceland has contested the legality of the vote, saying it violates Article 15 of [Act No. 80/1938, on trade unions and industrial disputes](#). Proceedings have started in the labour court, which is expected to announce its judgment in the middle of next week, prior to the commencement of the strikes.

# Ireland

## Summary

Employment (Miscellaneous Provisions) Act 2018 comes into operation on 04 March 2019, accompanied by a public information campaign.

## 1 National Legislation

### 1.1 Terms of Employment – Information

On 22 February 2019, the Minister for Employment Affairs and Social Protection announced that an information campaign was being launched to inform workers of new entitlements that will accompany important new employment legislation coming into operation on 04 March 2019. The campaign comprises print, radio, digital and social media advertising (more information is available [here](#)).

The [Employment \(Miscellaneous Provisions\) Act 2018](#) seeks to address the challenge of increased casualisation and to strengthen the regulation of precarious employment. The Act provides that

- employers shall give employees five core terms of employment within five days of starting work;
- zero-hours contracts will be restricted;
- a banded-hours system will be introduced where an employee's contract does not reflect actual hours worked.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Italy

## Summary

A Legislative Decree deals with the definition of 'crisis in an undertaking' and its consequences on the employment relationship and its termination.

## 1 National Legislation

### 1.1 Undertakings in crisis

Legislative Decree 12 January 2019, No. 14 'Code of Crisis in an Undertaking and Insolvency', has been published In the OJ of 14 February 2019, No. 38, ordinary supplement No. 6. From a labour law perspective, it deals with the definition of 'crisis in an undertaking', the consequences on employment relationships and their termination (individual and collective dismissal as well as resignation) of the arrangement with creditors in business continuity (*'concordato preventivo in continuità aziendale'*), judicial liquidation and the compulsory administrative winding up (*'liquidazione coatta amministrativa'*). Legislative Decree No. 14 of 2019 also revises the regulation of transfers of undertakings in crisis.

Other major points are:

- Article 2 para. 2 lett. a), which defines 'crisis' as a state of economic-financial difficulties that makes the debtor likely to become insolvent and for undertakings with an insufficient cash flow necessary for the planned obligations.
- Article 189 regulates the termination of the employment relationship in case of liquidation as well as the prerogatives of the insolvency administrator in case of collective dismissal.
- Article 190, which recognises the right of the employee, who resigns due to her employer's liquidation, to unemployment benefits, since resignations must be deemed to have just cause in this case.
- Article 376, which amends Article 2119 para 2 Civil Code in the sense that the compulsory administrative winding up (*'liquidazione coatta amministrativa'*) does not constitute a just cause for termination of the employment relationship.

## 2 Court Rulings

Nothing to report.

## 4 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Latvia

## Summary

(I) The Supreme Court has ruled that compensation for unused paid annual leave must be calculated based on the pay earned in the given period when the right to annual leave was accumulated.

(II) The decision of the CJEU in case C-385/17, *Hein* has implications on Latvian law with regard to the temporal effect of CJEU judgments.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Annual leave

*Supreme Court, 06 February 2019*

On 06 February 2019, the Supreme Court delivered a decision on the right to compensation in lieu for unused paid annual leave and the pay to be taken into account for the calculation of such compensation. The Supreme Court arrived at a conclusion that might be incompatible with EU law. The Supreme Court decided that compensation must be calculated on the basis of the pay the employee received in the given reference period during which the right to annual leave was accumulated.

In the present case, the claimant was employed in a low skill job and thus earned the statutory minimum wage. The statutory minimum wage, according to the decision of the Cabinet of Ministers, increases each year. The claimant's compensation for all periods of unused leave was not calculated on the basis of the statutory minimum wage defined for the year the employment relationship was terminated, but on the basis of different (smaller) amounts of statutory minimum wage which the dismissed employee had earned in previous years. The Court's finding that such calculation is legally correct is questionable from the perspective of Latvian labour law ('[Darba likums](#)'), since according to Article 75, the pay for annual leave must be calculated on the basis of pay received during the previous six months preceding the termination of the employment relationship. Also, the CJEU in its decisions has stressed that the period in which earnings were higher must be taken into account to ensure that the worker is entitled to his normal remuneration 'during periods of actual work' (see judgment in case [Hein](#)) or in case of part-time parental leave, during full-time employment (see judgment in case [Land Tirol](#)).

## 3 Implications of CJEU rulings and ECHR

### 3.1 Annual leave

*CJEU case C-385/17, 13 December 2018, Hein*

In addition to the implications of the decision in case C-385/17, 13 December 2018, *Hein*, as described in the Flash Report of December 2018, there is one more important implication. This concerns the CJEU decision in the present case on the temporal effects of CJEU judgments, namely, that interpretations given by the CJEU are applicable not from the time of delivery of the judgment but for the entire period the

respective legal norm is in force and that in the context of the right to paid annual leave, employers may not rely on the right to legitimate expectations.

Specifically, on 01 January 2015, the new regulation on the period for which an employee whose employment relationship has been terminated is entitled to compensation for unused annual leave entered into force. It provides that an employee has the right to compensation of unused paid annual leave for the entire period (see [amendments to the Labour Law](#)) i.e. the general carry-over period is not applicable with regard to the right to paid annual leave. On 30 November 2016, the Supreme Court ruled that the new regulation is only applicable to such cases where the employment relationship is terminated after 01 January 2015 (see judgment in [case No. SKC-2009/2016](#)). Thus, for cases in which the employment relationship is terminated before 01 January 2015, the carry-over period of 2 years (as previously provided) is applicable.

This raises two issues under EU law, first, that the previous regulation did not take into account the interpretation of the CJEU that carry-over periods for the right to annual leave or compensation in lieu cannot be applicable in case an employee did not actually have the possibility to take such leave, and, second, in the light of the CJEU's decision in the present case C-385/17, *Hein* on temporal effects of interpretations given by the CJEU, the decision of the Senate of the Supreme Court on the effect of new legal regulations on time, namely that it is limited to employment relationships terminated after 01 January 2015, runs contrary to the respective finding of the CJEU.

#### 4 Other relevant information

Nothing to report.



# Liechtenstein

## Summary

According to a ruling of the Liechtenstein Administrative Court, successive contracts should not be presumed where the employment relationship has been interrupted for two years. Apart from that, successive fixed-term employment contracts may be objectively justified in order to maintain the necessary flexibility in the employment of teachers.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Fixed-term employment

*Liechtenstein Administrative Court, No. VGH 2018/023, 09 May 2018*

The [ruling of the Liechtenstein Administrative Court](#) concerned a teacher who left the Liechtenstein school service on 31 July 2011. On 01 August 2013, he re-joined this service. The new one-year employment contract was extended three times by one year each time. Subsequently, a further extension of employment of the teacher was rejected. He demanded further employment under an employment contract of indefinite duration, since the maximum permissible duration for fixed-term employment relationships (five years) had been exceeded.

The Court ruled that in the light of the CJEU's case law, successive contracts should not be presumed where the employment relationship has been interrupted for two years. In the present case, the successive fixed-term contracts thus only lasted four years (reasons for decision, Nos. 9 and 10).

Apart from that, the Court stated that Article 18 of the Constitution provides for compulsory education and that the State must ensure that compulsory education in elementary subjects is provided free of charge to a sufficient extent in public schools. Accordingly, successive fixed-term employment contracts may be objectively justified under section 5(1)(a) of the Framework Agreement of [Directive 1999/70/EC](#) to maintain the necessary flexibility in the employment of teachers (reasons for decision, No. 8).

Therefore, the teacher's request was rejected.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Lithuania

## Summary

The Supreme Court has confirmed that for situations prior to 01 July 2017, courts have the obligation 'ex officio' to verify compliance with the minimum wage legislation of the host Member State.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Posting of workers

*Supreme Court, No. e3-K-3-73-248/2019, 27 February 2019*

The number of cases dealt with by Lithuanian courts on the conditions of posted Lithuanian workers has been steadily increasing. In a [recent judgment](#), the Supreme Court consolidated and reaffirmed its position when examining the claim of Lithuanian employees (arising from the posting before the entry into force of the new Labour Code of 01 July 2017) posted to Finland. The Court reiterated the principle that the courts have an ex officio duty to verify whether the employer met the obligations imposed by the Finish minimum wage legislation. The new Labour Code no longer includes this obligation and thus indirectly refers this question to the law of the Member State in question.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Luxembourg

## Summary

A bill on time saving accounts has been passed.

## 1 National Legislation

### 1.1 Time saving accounts

The final report of the parliamentary commission on Bill No. 7324 on time saving accounts (*'compte épargne temps'*) in the private sector has been adopted. The final law is expected to come into force within the next months. There have been no substantial changes to the initial bill, so the summary presented in Flash Report 6/2018 is still accurate.

More information is available [here](#).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Norway

## Summary

The Supreme Court has confirmed the practice of the results of a general evaluation of the principle of seniority weighed against other criteria for the selection criteria of employees to be dismissed in case of downsizing.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

### 2.1 Workforce downsizing selection criteria

*Supreme Court, No. HR-2019-424-A, 28 February 2019, Skanska*

The Supreme Court judgment in [Case HR-2019-424-A of 28 February 2019, Skanska](#), provides important clarifications on the weight of the principle of seniority, which is a core principle of the Basic Agreement between The Norwegian Confederation of Trade Unions (LO) and The Confederation of Norwegian Enterprise (NHO) Paragraph 8-2 in case of downsizing. The Court refers to previous cases on workforce downsizing selection criteria.

The Supreme Court states that the selection of employees to be terminated in all cases are based on the principle of seniority weighed against other criteria for selection depending on the enterprise's situation and needs in addition to other social individual needs on the side of the employee. For that reason, it is misleading to define the principle of seniority as a 'main rule' (see paragraph 61 and 62). The Supreme Court's conclusion was therefore that Skanska was correct in treating the principle of seniority as a criteria, amongst others, such as qualifications and the needs of the enterprise. Despite this, Skanska lost the case, as the Supreme Court found serious flaws in the process leading to the dismissals. The criteria chosen by the employer included sub-criteria like creativity, independence and reputation. These sub-criteria were not substantially explained/documentated by the employer for each employee involved, and the courts could not as a consequence control the process and the grounds presented as justification for dismissal. The dismissals were found invalid for this reason.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Poland

## Summary

A Draft Law on the principles of work performance in commercial establishments would grant workers in this sector a day off every second Sunday.

## 1 National Legislation

### 1.1 Work on Sundays in commercial establishments

On 20 February, deputies from the political party 'Modern One' ('Nowoczesna') submitted a [Draft Law](#) on work performance in commercial establishments.

The Law covers employees and civil law contractors that work in shops, supermarkets, etc. The basic notion of the draft is to grant every employee who works in a commercial establishment at least two Sundays off from work within a four-week period. Thus, as regards this category of workers, the new Law would modify the principle provided by Article 151<sup>12</sup> of the Labour Code. According to this provision, each employee who works on Sundays should be granted one free Sunday at least once within a four-week period.

The planned Law would also repeal the [Law](#) of 10 January 2018 on limiting trade on Sundays, public holidays and some other days (Journal of Laws 2018, item 305). This legal act provides for prohibition to work in commercial establishments on Sundays. Since 01 March 2018, shops have been closed every second Sunday. Since 01 January 2019, shops can only be open on one Sunday per month (as a rule, the last Sunday of the month). Since 01 January 2020, the general prohibition to carry out trade activities on Sundays is expected to take effect (see Flash Report Poland 1/2019, section 1 B, with further references).

The drafters propose the new Law to take effect on 01 March 2019.

The consolidated text of the Labour Code (Journal of Laws 2018, item 917) can be found [here](#).

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

Nothing to report.

# Portugal

## Summary

(I) Different minimum wages for the public and private sectors have come into force.

(II) Article 398 (2) of the Companies Code, providing for automatic termination of employment contracts of less than one year at the time of appointment of the worker as a member of the board of directors was declared unconstitutional.

(III) New legislation on equal pay for men and women, which was passed in August last year, has entered into force. Amendments of the Labour Code are still being discussed in Parliament.

## 1 National Legislation

### 1.1 Minimum wage in the public sector

[Decree-Law No. 29/2019](#), 20 February 2019, increases the minimum wage in the public sector. Since 01 January 2019, civil servants are entitled to a minimum wage of EUR 635.07. This decree law aims to reduce the social inequalities, fight poverty, increase families' income and promote economic growth.

A public debate took place whether the increase in the minimum wage to that amount in the public sector is in line with the principles of equal pay and non-discrimination, as the minimum wage in the private sector was only [increased to EUR 600.00](#) on 01 January 2019. The minimum wage in the public sector corresponds to a weekly work period of 35 hours ([Article 105 \(1\) \(b\) of the General Law of Public Sector](#)), while in the private sector, it corresponds to a 40-hour week ([Article 203 \(1\) of the Labour Code](#)).

### 1.2 Employment contract for professional ballet dancers

[Law No. 22/2019](#), 26 February 2019, which came into force on 27 February 2019, establishes special rules for professional ballet dancers on (i) compensation for damages emerging from work-related accidents, (ii) re-skilling and re-training and (iii) early retirement.

## 2 Court Rulings

### 2.1 Extinction of the employment contract

*Constitutional Court, No. 53/2019, 23 January 2019*

According to [ruling No. 53/2019](#) of the Constitutional Court of 23 January 2019, recently made available to the public, the rule establishing the discontinuation of an employment contract of less than a year at the time of appointment of the worker as a member of the board of directors (public limited company) – [Article 398 \(2\) of the Companies Code](#) – is unconstitutional due to the lack of a public hearing of the workers' associations during the legislative procedure. This is the third similar decision of the Constitutional Court. Therefore, it is now possible to eliminate this rule from the national legislation through a special procedure before the Constitutional Court. As a consequence, an employment contract will only be suspended due to the appointment of the worker to the board of directors, regardless of her seniority.

### 3 Implications of CJEU rulings and ECHR

Nothing to report.

### 4 Other relevant information

#### 4.1 Equal pay

On 21 February [Law No. 60/2018](#), which was passed on 21 August 2018, on equal pay for men and women, came into force. This law aims to promote wage equality between both genders who perform work of equal value. There are six rules that should be highlighted:

- the public sector will disclose statistical data based on employers' annual report (Article 3);
- the employer shall ensure a transparent remuneration policy, based on the evaluation of the job characteristics and apply objective criteria (Article 4);
- in case of wage gaps, the Authority for Work Conditions (*'Autoridade para as Condições do Trabalho'*) shall notify the employer to deliver an evaluation plan to be implemented over a 12-month period (Article 5 (1) and (2));
- if the employer is not able to justify the wage gap within said procedure, it will be deemed a discriminatory gap (Article 5 (5));
- upon application by the worker or her trade union representative, the Commission for Equality in Labour and Employment (*'Comissão para a Igualdade no Trabalho e Emprego'*) may issue an opinion on wage gaps (Article 6 (1));
- if the employer is not able to justify the wage gap within such procedure, it will be deemed a discriminatory gap (Article 6 (8)).

#### 4.2 Labour Code amendments

Further to previous Flash Reports, [Draft Law No. 136/XIII](#) and [1025/XIII](#) are still being discussed in the Portuguese Parliament.

# Romania

## Summary

(I) Day labour agencies will become functional.

(II) The Court of Cassation has found that working conditions that entitle workers to early retirement cannot be established retroactively through mediation between the parties.

## 1 National Legislation

### 1.1 Day labour agencies

According to Article 13<sup>2</sup> of the [Day Labourers Law No. 52/2011](#), introduced by [Law No. 86/2018](#), the activity of matching day labour supply and demand is carried out by accredited work agencies according to criteria and a procedure to be approved by government decision. Based on this provision, [Government Decision No. 92/2019](#) for the approval of criteria and of the procedure of accreditation of agencies matching day labour supply and demand was adopted and published in the Official Gazette No. 151 of 26 February 2019. Among the criteria for the licensing of day labour agencies is owning the necessary material basis and the condition that at least 25 per cent of the staff providing labour intermediation services have a higher education in one of the specialties: psychology, pedagogy, law, as well as experience in staffing of at least two years.

The accreditation of the companies will be carried out by the National Agency for Employment, by the county employment agencies and the Bucharest Municipality.

Day labourers do not conclude employment contracts and they are not employees, but they are parties in an employment relationship. The Romanian lawmaker has intervened numerous times in the sphere of day labourers' legal regime, without establishing a very clear general strategy for this category of workers. At the end of 2018, the areas in which they can legally operate were considerably reduced (see Flash Report for December 2018), but a new draft law would broaden these areas again.

## 2 Court Rulings

### 2.1 Mediation of labour disputes

*High Court of Cassation and Justice, No. 79/2018, 14 February 2019*

According to the rules for the application of the provisions of [Law No. 263/2010](#) on the unitary pension system, approved by [Government Decision No. 257/2011](#), the certificates attesting to the fact that employees have worked under special or difficult working conditions for certain periods are drawn up on the basis of verifiable documents, which are in the employer's records or legal archive holders. Proof of employment under such conditions determines the right of employees to retire at a lower age.

Under these circumstances, the question arises whether disputes about the recognition of employment under special or difficult conditions can be resolved through mediation at the time of termination of the employment contract. In principle, [Law No. 192/2006](#) on the mediation and organisation of the mediator's profession, subsequently amended and supplemented, allows the mediation of labour disputes. However, its application to disputes as mentioned above would have led to the





awarding of certain pension rights for employees without the involvement of the pension agency.

The High Court of Cassation and Justice thus ruled by [Decision No. 79/2018](#), published in the Official Gazette of Romania No. 117 of 14 February 2019, that past working conditions cannot be the subject of mediation at the time the employment relationship ends. As a result, such litigation can only be settled by the courts on the basis of the submitted evidence of the conditions under which the work was actually performed. There is therefore no room for an alternative dispute resolution mechanism when it comes to retrospectively recognising employees' working conditions at the end of their employment.

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

Nothing to report.

### **4 Other relevant information**

Nothing to report.

# Slovenia

## Summary

A legislative proposal that would allow full-time work for pension recipients is being publicly discussed.

### 1 National Legislation

Nothing to report.

### 2 Court Rulings

Nothing to report.

### 3 Implications of CJEU rulings and ECHR

Nothing to report.

### 4 Other relevant information

#### 4.1 Double status of pensioners

According to information in the media, the basic concepts of future pension reform shall be made public and presented to the social partners and other interested civil society members in the very near future. This information shall focus on forms of pensioners' work, and not on the possible changes in the pension insurance system as such.

The government's coalition agreement, inter alia, provides that the institute of 'double status' of pensioners shall be included in future amendments to the Pension and Invalidity Act. Such status means that workers may be employed again after retirement. They are entitled to their complete pension and to the wage for working in full-time employment. They are required to pay all social insurance contributions.

The introduction of the 'double status' of pensioners is also required by one of the opposition parties together with the association representing craftsmen and individual entrepreneurs. According to their proposal, such status should apply to craftsmen and individual entrepreneurs who fulfil all conditions to retire but would still like to continue working.

Proponents of the idea contend that it is necessary to address the lack of competent workforce, improve the financial situation of many pensioners who have low pensions and generate additional contributions to the budget. Opponents insist that the system would become discriminatory if it only applied to craftsmen and individual entrepreneurs. Some argue that due to the payment of social insurance contributions, the income of some pensioners would in fact be lower and not higher.

The Minister of Labour remains cautious about the above-mentioned proposals, considering that pensioners are already now allowed to carry out different forms of work: temporary or casual work and work under civil law contracts (copyright contract, contract for services).

# Spain

## Summary

(I) Legislation has been passed on trade secrets, employment at universities (including rules on the conclusion of fixed-term contracts) and contributions to social security (again with a view to discouraging fixed-term contracts).

(II) The Supreme Court has considered the exclusion of trade union-related information in monthly intranet newsletters a violation of the freedom of association and confirmed the permissibility of mandatory medical examinations in high-risk occupations.

## 1 National Legislation

### 1.1 Trade secrets

For the purpose of this [Act](#), a trade secret is 'any information or knowledge, including technological, scientific, industrial, commercial, organisational or financial' information, which meets three conditions:

- it is confidential;
- has commercial value;
- and has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it confidential.

It is not a law that can be considered as a part of labour law. Instead, it is part of commercial law, because it supplements the protection provided by the laws of industrial property and intellectual property. However, it contains some relevant rules from the perspective of labour relations:

- The legal regulation of trade secrets does not affect collective bargaining;
- These rules cannot restrict the right to workers' mobility nor can it limit their right to offer their honestly acquired experience and professional skills in the market;
- Trade secrets regulations cannot lead to the imposition of any additional restrictions on employees in their employment contracts;
- The information obtained by the workers and by the workers' representatives in the exercise of their information and consultation rights is lawful;
- The measures, procedures and remedies provided for in the Law cannot be used where the alleged acquisition, use or disclosure of the trade secret falls under the protection of the right to freedom of expression and information, nor in cases of disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions, nor when the purpose is to reveal misconduct, wrongdoing or illegal activity with the aim of protecting the general public interest.

### 1.2 Employment at universities

This [Law](#) modifies the science and university legislation to promote research. It contains two important rules on employment contracts:

- Fixed-term employment contracts in this field are not subject to the temporary limits imposed by the Labour Code. The purpose is to boost research activities;

- Permanent employment contracts are allowed for the execution of public research plans and programmes financed by annual budgetary allocations.

### 1.3 Contributions to social security

Contributions of employers and workers are the main monetary resources for the funding of the Spanish social security scheme. These contributions include two basic concepts: the contribution to fund the protection of accidents at work, which is paid by employers, and the contribution to fund benefits due to other risks (retirement, temporary disability, etc.), which is provided by undertakings for the most part, but also by workers. The contribution to social security is, therefore, a relevant labour cost for employers. The rules for calculating such contributions are approved each year in the Budget Act and developed in a Ministerial Order.

The social security [contribution rules](#) contain measures that have an impact on employment and labour law:

- The contribution for unemployment insurance is higher in fixed-term employment contracts to promote permanent employment;
- The contribution for fixed-term employment contracts that last less than six days is higher in order to promote longer contracts;
- Vocational training and the Wage Guarantee Fund are funded through specific contributions.

## 2 Court Rulings

### 2.1 Freedom of association

*Supreme Court, No. 27/2019, 15 January 2019*

The undertaking assigned the unions a space on the intranet to publish their communications/information/news for workers. The undertaking sent an email to the workers once a week informing them about the information the trade unions had posted to the intranet. After a conflict with one of the unions, the company no longer included information from that union in the weekly emails. The [Supreme Court considered](#) this a violation of the freedom of association.

### 2.2 Health surveillance

*Supreme Court, No. 33/2019, 21 January 2019*

An undertaking required certain workers, passenger vehicle drivers, to undergo a mandatory medical examination. The workers rejected this demand because they considered that the rights to physical integrity and privacy allowed them to refuse such health monitoring. The [Supreme Court considered](#) that passenger vehicle drivers carry out a job that is associated with risks not only for themselves, but for others, so the employer can establish health monitoring as a mandatory obligation according to Spanish law (Article 22 of [Law on Prevention of Occupational Hazards](#))

## 3 Implications of CJEU rulings and ECHR

Nothing to report.



## **4 Other relevant information**

### **4.1 General election**

The President of the Spanish government has called general elections in April, so the activities of Parliament and the government will be very low in the coming months.

# Sweden

## Summary

Proposed legislation plans to extend regular employment protection (i.e. delay the retirement age) from age 67 to 68 and, in 2023, to age 69. The earliest regular retirement age will be raised to 62 and later, to 63 years.

## 1 National Legislation

Nothing to report.

## 2 Court Rulings

Nothing to report.

## 3 Implications of CJEU rulings and ECHR

Nothing to report.

## 4 Other relevant information

### 4.1 Proposal for extended employment protection (delayed retirement age)

The legislative process to extend full employment protection to employees beyond the age of 67 years is currently in a final evaluation stage (constitutional evaluation by the judges in the Council of Legislation, *Lagrådet*), before being submitted to Parliament. [The proposal](#), which has broad parliamentary support and is very likely to pass through Parliament, addresses demographic changes in society by delaying the 'retirement date' by which an employee loses her standard employment protection, from 67 years to, first, 68 and later 69 years of age. This will constitute the new normal or 'statutory' pensionable age after which employees are not entitled to continue their employment, unless a new, separate arrangement is concluded with the employer. The proposed provisions are suggested to come into force in 2020 (68 years) and 2023 (69 years), respectively.

The provisions establishing a special form of fixed-term employment for employees over the age of 67 years have been modified through the same proposed legislation. The difference is minor, however, since 'ordinary' fixed-term contracts under para 5 of the [Employment Protection Act](#) ('*lagen om anställningsskydd*') will not be converted into permanent contracts for employees above the age of 68 years (later 69) in the same way as for younger employees. It is worth pointing out that employees currently have the right to retire, completely or partly, starting at the age of 61 years, but are financially encouraged to continue employment until the age of 67. The financial incentives are based on contributions to the pension scheme and life expectancy, and are, in most cases, significant. In parallel to the aforementioned changes to the employment protection act, the pension scheme will face delayed (earliest) retirement ages as well, from 61 to 62 and later 63 years of age.

## United Kingdom

(I) Two Court of Appeals decisions have found agency workers entitled to payment by London Underground after insolvency of the agency, and a dismissal related to a transfer of undertaking as automatically unfair.

(II) The first decision of an Employment Tribunal recognising public sector worker status of tour guides in the National Gallery has been rendered.

(III) Tribunal compensation limits will be increased as from April 2019.

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### 1 National Legislation

Nothing to report.

### 2 Court Rulings

#### 2.1 Agency worker

*Court of Appeal, No. [2019] EWCA Civ 125, 19 February 2019, London Underground v Amissah*

[London Underground v Amissah](#) [2019] EWCA Civ 125 was the latest stage in a long running dispute between agency workers, their agency, and London Underground (LU). Their agency and LU disregarded the terms of the Agency Workers Regulations 2010 on the right of workers to be paid equalised pay rates compared with direct recruits. LU subsequently over the arrears of the pay to the agency which subsequently went bust without paying the money over to the agency workers. The Court of Appeal held that it was just and equitable for LU to pay compensation to the extent it was found responsible.

#### 2.2 TUPE

*Court of Appeal, No. [2019] EWCA Civ 216, 22 February 2019, Hare Wines v Kaur*

In [Hare Wines v Kaur](#) [2019] EWCA Civ 216 the Court of Appeal upheld a decision regarding the reasons for a dismissal during a TUPE transfer. The transferee did not want the claimant to continue working for it because of a poor working relationship with a colleague who was to become director of the transferee. The transferor dismissed the claimant on the day of the transfer. The Court of Appeal said the tribunal could be automatically unfair for being related to the transfer.

#### 2.3 Worker status

*Employment Tribunal, No. 2201625/2018, 27 February 2019, Braine v National Gallery*

[Braine v National Gallery](#) is the first case where individuals working as tour guides talking about art in the National Gallery were considered workers. This is the first case involving the public sector.

### 3 Implications of CJEU rulings and ECHR

Nothing to report.



## 4 Other relevant information

### 4.1 Tribunal awards

Tribunal compensation limits will increase on 06 April 2019 under the Employment Rights (Increase of Limits) Order 2019 (SI 2019/324). The maximum compensatory award for unfair dismissal will rise from GBP 83 682 to GBP 86 444.



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