Flash Reports on Labour Law January 2024

Summary and country reports

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

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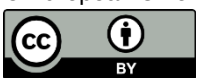

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Executive Summary

National level developments

In January 2024, 23 countries reported labour law developments (all countries except for **Austria, Iceland, Lichtenstein**, **Lithuania**, **Luxemburg, Malta, Norway** and **Sweden**). The following were of particular significance from an EU law perspective:

Fixed-term work

In **France,** as of 1 January 2024, the December 2022 Labour Market Law, which is included in the French Labour Code, requires employers to inform the public employment agency of refusals by fixed-term or interim employees to accept permanent contracts. The law, which has been in effect since a 29 December 2023 decree, introduces specific obligations for employers when offering permanent contracts in both scenarios, emphasising adherence to the updated provisions in the French Labour Code. In **Slovakia**, the Supreme Court ruled that the employer's exclusive reliance on the performance of work as defined in the collective agreement is insufficient to establish a material reason that justifies the extension of a fixed-term employment contract. The Supreme Court in **Spain**, by explicitly referring to Directive 1999/70/EC, reiterated that the employer is not allowed to establish different rates of pay for temporary and permanent workers.

Collective redundancies

In **Portugal**, the Supreme Court Justice ruled on the validity of a collective dismissal at Novo Banco, a Portuguese banking institution. The Court pointed out the importance of respecting the company's management criteria in assessing the grounds for dismissal, and ensuring a reasonable connection between the invoked reasons and the decision to reduce staff through collective dismissal.

Remote work / teleworking / platform work

In the **Czech Republic**, a decree of the Ministry of Labour and Social Affairs has updated the lump sum compensation for teleworking. The Supreme Court in the **Netherlands** ruled on the employment status of cleaners who work for private households through the platform Helpling. The questions the Court dealt with were whether the cleaners are to be considered employees of private households or of Helpling, which entity serves as a temporary work agency and who is subsequently required to comply with the obligations laid down in Directive 2008/104/EC as implemented in the Posting of Workers by Intermediaries Act.

Collective bargaining and collective action

In **Croatia**, the Collective Agreement for the Wood and Paper Industry has been concluded. Similarly, in **Slovenia**, annexes to several sectoral collective agreements have been added, introducing a number of amendments. Furthermore, in **Romania,** in a case concerning a conflict over the Law on Social Dialogue, the High Court of Cassation and Justice ruled that federations, confederations, or union associations have equal rights in defending employees' rights and interests.

Whistleblowers

In **Poland**, a bill aimed at transposing the provisions of Directive 2019/1937 of the European Parliament and the Council of the European Union of 23 October 2019, concerning the safeguarding of individuals reporting violations of Union laws (Whistleblowing Directive) has been published. Moreover, in the **Netherlands**, a consultation has been initiated on the Whistleblower Act for the judiciary. This legislation seeks to provide safeguarding measures for

employees who disclose potential misconduct to their employer, commonly referred to as whistleblowers.

Working time

In **Cyprus**, a debate on the working time of shop workers and the necessity of dialogue with social and advisory committees on shop opening hours has been initiated. In the **Czech Republic**, an amendment was introduced to the Labour Code, allowing selected healthcare workers to work continuously for up to 26 hours, with subsequent compensation for an uninterrupted daily rest period. In **Denmark**, the Danish Working Time Act was amended following an ordinary parliamentary process. In **France**, the Court of Cassation overturned a decision issued by the Court of Appeals in a case that concerned the monitoring of the weekly rest period. In **Slovenia**, the Higher Labour and Social Court ruled on a case that involved the working time of military personnel by directly applying the relevant provisions of the Working Time Directive 2003/88. In the **Netherlands**, a new decree amends several provisions in the Working Hours Decree, such as minimum breaks and daily and weekly rest periods.

Posting of workers

In the **Netherlands**, the consultation phase for amending rules on the posting of workers by intermediaries is open from 24 January to 24 February 2024. The proposed changes, among others, cover the application process for authorisations, the sharing of data with labour inspectorates and tax administrations, and additional standards within the legal framework.

Termination of employment

In **France**, the Social Chamber applied for the first time the position established by the Court of Cassation at the end of 2023 on the use of unfair evidence in court to terminations of employment contracts. In **Romania**, Law No. 360/2023, which entered into force on 1 January 2024, allows employees to continue their employment contract until they reach the age of 70 years, regardless whether they are women or men and irrespective of the statutory retirement age.

Other developments

In **Belgium**, the Federal Parliament decided to introduce certain changes to the flexi-jobs system, which was established by the Law of 16 November 2015, containing several provisions on social affairs. In **France**, in a case that concerned the monitoring of employees, the French Data Protection authority (CNIL) ruled that the video surveillance system used by AMAZON FRANCE LOGISTIQUE in its warehouse, violated the obligations of information and transparency, as well as the security obligations imposed by the GDPR. In the **Netherlands**, via a parliamentary letter, the Minister of Social Affairs and Employment informed Parliament of the results of the compliance survey of the Works Councils Act. Finally, in **Slovakia**, the Supreme Court clarified that an employer, by notifying its employee about a violation of labour discipline, had acted lawfully. Specifically, the Court emphasised that such notification does not constitute an unlawful threat to force the employee into agreeing to the termination of the employment relationship.

Implications of CJEU Rulings

Working time

This Flash Report analyses the implications of a CJEU ruling on part-time work.

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The present case concerned the interpretation of Article 7 of Directive 2003/88, which deals with entitlement to paid annual leave.

The CJEU clarified that EU law, particularly Article 7 of Directive 2003/88 and Article 31(2) of the Charter, prohibits national legislation which, for reasons of controlling public expenditure and organisational needs of the public employer, prohibits payment of an allowance in lieu of untaken annual leave when an employee voluntarily terminates the employment relationship. The Court emphasised that the reason for termination, such as voluntary resignation, does not affect entitlement to the allowance, and restrictions should not go beyond those expressly laid down in EU law.

The ruling will reportedly have little to no implications for the majority of countries, as national legislation and case law are already in line with the CJEU's decision.

Nonetheless, this is not the case for **Italy**, where the CJEU's ruling has major implications and challenges the legality of legislation that restricts the entitlement of civil servants to an allowance for annual leave not taken upon voluntary resignation.

Potential implications may also arise for **Cyprus**. The CJEU's decision could prompt a review of Cypriot legislation related to annual leave to ensure alignment with EU law. Specifically, considerations regarding entitlement to an allowance for untaken leave upon resignation and any restrictions linked to public expenditure may come under scrutiny in light of this ruling.

The CJEU's decision may also have implications for **Greece** due to the existence of potential disparities between Greek regulations and EU social law principles concerning compensation for untaken annual leave, particularly in the public sector.

In Ireland, moreover, if a similar case arises at national level, it will require the Irish authorities to evaluate the circumstances surrounding the exercise of the right to paid annual leave, considering, *inter alia*, whether employers have actively encouraged and informed employees about their accrued annual leave.

The CJEU ruling is also relevant for **Malta**, as national authorities may need to reconsider the legislation on annual leave, specifically the limitations on carrying forward leave, to ensure conformity with EU law

Table 1: Major labour law developments

Topic	Countries
Collective bargaining and collective action	CR RO SL
Collective redundancies	PT
Fixed-term work	ES FR SK
Migrant workers	BG FI RO
Minimum wage	BE CZ DE EL IE MT NL PO
Occupational health and safety	CR PO
Part-time work	BE
Parental leave	HU IT
Posting of workers	NL
Remote work / teleworking / platform work	CZ NL
Sick leave	IE
Termination of employment	RO FR
Transfer of undertakings	NL
Undeclared work	CR
Whistleblowing	NL PO
Work-life balance	ES
Working time	CY CZ DK FR SL NL

Austria

Summary

There have been no new developments in national legislation or case law of relevance from the perspective of EU labour law in January 2024.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

In Austria, persons employed in the public sector are subject to different regulations depending on the nature of their employment relationship. They can either be public servants or contractual public employees. For federal public servants, the Remuneration Act (Gehaltsgesetz – GehG) provides in § 13e as follows (unofficial translation by the author):

> *(1) The civil servant shall be entitled to compensation for unused annual leave upon leaving the service or the employment relationship if he or she is not immediately transferred to another employment relationship with the Federal Government (leave compensation).*
>
> *(2) Leave compensation shall not be due for those parts of the annual leave that the civil servant did not use despite timely, unambiguous and demonstrable encouragement by his or her superior in accordance with § 45 (1) BDG 1979, unless such use was not possible because of incapacity for work due to illness, accident or indisposition.*

The Federal Act on Contractual Public Servants (Vertragsbedienstetengesetz - VBG) does not provide for financial compensation for unused leave in case of a termination of the employment relationship if the leave is forfeited (§ 28b (5) VBG). § 27h (3) VBG states that annual leave shall not be forfeited if the respective superior was not notified in a timely, unambiguous and documented way that the respective contractual public employee will be taking leave.

The legal situation for federal public servants and contractual public employees is therefore in line with the CJEU's ruling in the present case.

The situation in the private sector is not that evident, as the Annual Leave Act (Urlaubsgesetz – UrlG) provides that the employee is entitled to compensation for any outstanding annual leave entitlement that is not time barred upon termination of the employment relationship. § 4 (5) UrlG provides for a limitation period concerning the right to annual leave and reads as follows (unofficial translation by the author): "*The right to annual leave expires two years after the end of the annual leave year in which it arose*." Unlike in the legislation for federal public servants, no obligation of the employer is mentioned concerning active facilitation of the use of annual leave. In a

recent ruling, the Austrian Supreme Court (of 27 June 2023, 8 ObA 23/23z) aligned the application of the mentioned limitation period for annual leave to the interpretation of Article 7 para. 1 WTD as provided for by the CJEU. It granted an employee his entitlement to the annual leave indemnity payment as the employer had neither requested him to take his annual leave nor had the employer informed him of the impending limitation period. The Court, however, limited the restriction of the limitation period's application to the amount of annual leave provided for in the WTD, i.e. four weeks per year. The exceeding fifth and after 25 years of service sixth week of annual leave is still time barred without the employer having to request and inform the employee to use his/her annual leave, as Union law does not apply to this. A preferable solution would be an amendment of the Annual Leave Act that establishes an explicit duty for the employer to remind the employee and—as a transparent prerequisite—to request for the right to annual leave to become time barred. Employees would then not have to make reference to jurisprudence but would be able to refer to an explicit legal basis in the Annual Leave Act.

Therefore, although only based on case law, the legal situation for the private sector is also in line with EU prerequisites. Thus, the present ruling has no implications for Austria.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) The Programme Law of 22 December 2023 aims, among many other things, to amend the provisions on flexi-jobs to increase the employer's contribution for flexi-jobs from 25 per cent to 28 per cent, and to allow additional sectors to benefit from flexi-jobs. These include the agriculture sector, certain parts of the food and the events sector. The Programme Law provides for either admission or exclusion from this chapter for certain sectors such as education and the welfare and health sector. Access to the flexi-jobs system has been restricted and the law also contains so-called anti-abuse provisions.

(II) The so-called "Postal Parcel Deliverers Law" of 17 December 2023 aims to improve the working conditions of all postal parcel deliverers in Belgium, reduce social and fiscal fraud and favour fair competition. The parcel distribution sector is characterised by fierce competition and where margins are small. This sector is currently characterised by a structural reliance on subcontracting through small distribution companies. This leads to particularly high pressure on the wages/fees and working conditions of parcel delivery companies and builds a breeding ground for social and fiscal fraud. The existing rules are not an adequate response to this problem. The mechanisms introduced by the new law for notification and prevention, as well as reporting obligations, minimum remuneration and postal service provider liability could address this situation.

(III) According to the Constitutional Court, the statutory calculation of severance pay in the Employment Contracts Law in case of an immediate dismissal by the employer of an older employee of at least 55 years, whose choice of a part-time job as an end-of-career job based on his corresponding salary was not discriminatory.

1 National Legislation

1.1 Flexi-jobs

The flexi-jobs system was introduced by the Law of 16 November 2015, which contained several provisions on social affairs. This system was introduced a flanking measure to accompany the introduction of the mandatory registered 'white' cash register. It initially only applied to undertakings in the hotel, restaurant and café sector (the so-called horeca sector), to deal with peaks and unpredictable circumstances within this sector. The flexi-jobs scheme proved beneficial for both employers and flexi-job employees. The flexi-job workers' wage is exempt from social security contributions and income tax. This exemption is based on the nature of supplementary employment, where flexi-job workers are already fully subject to the social security system and pay income tax due to their main activity. Flexi-job workers must meet certain conditions, however. For instance, they must be already working 4/5ths with one or more other employers. This condition is in place to prevent ordinary employment contracts from being converted into flexi-job employment contracts.

The employer is required to pay a solidarity contribution on wages. Since 2018, flexi-jobbers have been allowed to work in the retail sector, among others, and pensioners can also engage in flexi-jobs to earn additional income. This system has proven successful so far and has been well-received by both employers and employees.

Nevertheless, the Federal Parliament decided to introduce certain changes.

Articles 181 to 189 of the new Programme Act of 22 December 2023 (*Moniteur belge* 29 December 2023) introduce amendments to the flexi-job scheme, making it much more complex, on the one hand, by widening the scope of application, but also making

it more expensive, on the other, introducing sophisticated anti-abuse provisions. What will change from 01 January 2024?

(i) Employers from 12 additional sectors will be able to take advantage of flexi-jobs. In the private sector, these are employers in the following sectors:

- Bus/coach transportation,
- Education/training,
- Sports and culture,
- Funeral homes
- Childcare,
- Events,
- Nutrition,
- Driving schools and training centres,
- Automotive,
- Agriculture and horticulture,
- Real estate,
- Waste removal.

(ii) Opt-out and opt-in

For the industries by the extension of the system in the Programme Law, the social partners can opt-out of allowing flexi-jobs in full or in part (opt-in).

In all other industries outside the scope of the law and that are governed by the Collective Bargaining Law of 5 December 1968 on collective bargaining agreements and joint committees, the social partners can agree to allow flexi-jobs in full or in part (opt-in) or to not allow them in full or in part (opt-out).

Authorisations (opt-in) or exclusions (opt-out) only become active through an annual royal decree that enters into force on 1 January of the following year. The scope of authorisations (opt-in) and exclusions (opt-out) must be defined in this royal decree on the basis of criteria that are verifiable by the National Social Security Office (joint committee or joint subcommittee, employer category, code, etc.).

(iii) Exclusions

The following functions are excluded in all industries from the scope of flexi-jobs:

- Artistic, artistic-technical and artistic support functions that include activities as defined by the Law of 16 December 2022 establishing the Artwork Commission and improving the social protection of art workers;
- The functions that include tasks that belong to the material scope of the Coordinated Law of 10 May 2015 on the exercise of healthcare professions.

(iv) Increase in the social security contributions paid by the employer

The employer's social security contributions calculated on flexi-wages will increase from 25 per cent to 28 per cent for all services provided from 01 January 2024 onwards.

(v) Minimum and maximum wage

In the horeca sector, the current flexi-wage will continue to apply in 2024.

However, in all other sectors, starting in 2024, flexi-job workers must always be paid the sectoral minimum wage for the job they are performing. Where no sectoral collective

bargaining wage exists, the flexi-jobber must be paid a wage that is at least equal to the general intersectoral monthly minimum wage.

To 'prevent abuse', a maximum wage will also be introduced. The flexi wage (including all premiums, allowances and benefits) may still be a maximum of 150 per cent of the basic minimum wage for that position or the general intersectoral monthly minimum wage.

(vi) For employees, the full income tax exemption will no longer apply. Instead, there will be a ceiling of EUR 12 000 annually. Any income above this amount will be subject to taxation starting in January 2024. Despite the fact that the number of flexi-jobbers earning more than this maximum limit is very limited, this new measure adds another layer of complexity to the legislation.

The limit of EUR 12 000 will not be indexed. Pensioners are excluded from this provision and can continue to earn additional income that remains untaxed.

(vii) No employment with the same employer

Until the end of 2023, individuals were prohibited from working as a flexi-jobber in the same quarter for an employer for whom they worked at least 80 per cent as an employee. That rule is now being tightened. An employee may no longer work as a flexi-jobber in the same quarter for an employer for whom he or she is already employed under another employment contract. This applies even if the employee only works 50 per cent for that employer, for example.

(viii) Affiliated businesses

Those who have multiple hospitality businesses or affiliates should bear in mind that a flexi-jobber may not have an employment contract of at least a 4/5th regime with a connected enterprise in the quarter in which they are or will be employed.

As of 2024, employers cannot employ a flexi-jobber at a company that is affiliated with their own company. This refers to situations in which an employee has concluded an ordinary employment contract with an employer but would work for an affiliated enterprise as a flexi-jobber.

To determine whether two or more companies are affiliated with each other, the definition in Article 1.20 of the Companies and Associations Code is invoked. Article 1.20 provides for the following:

> For the purposes of this Code, the following definitions shall apply:
>
> 1 "companies associated with a company":
>
> (a) companies over which it exercises controlling power;
>
> b) companies over which it exercises power of control;
>
> c) companies with which it forms a consortium;
>
> d) other companies which, to the knowledge of its governing body, are under the control of the companies referred to in (a), (b) and (c).

Thus, if one company is controlled by another, associated companies exist. Consider, for example, a parent and a subsidiary (daughter) company.

Two companies are related if they form a consortium. If two or more companies are under central control, they are considered a consortium. This is the case if:

- the central management results from agreements concluded between the companies or from statutory provisions, or
- their governing bodies consist for the most part of the same persons.

1.2 The so-called "Parcel Law of 17 December 2023 on protection for postal parcel deliverers"

The Law of 17 December 2023, which sets down various provisions with a view to improving the working conditions of postal parcel deliverers, *Moniteur belge* 28 December 2023, has been issued.

This 'parcel law' amends some provisions in the Law of 26 January 2018 on Postal Services, the Code on Economic Law and the Social Criminal Code, among others, to ensure better protection for postal parcel deliverers and to fight social and fiscal fraud. A postal parcel deliverer is considered to be a self-employed person or employee, who is responsible for the distribution of postal parcels of up to 31.5 kg on behalf of a postal parcel company.

Moreover, the law has a broad territorial cross-border character. It applies to all postal parcel companies as soon as a postal parcel is delivered in Belgium. This rule also applies even when distribution starts abroad. Additionally, this legislation covers distribution services performed in Belgium for delivery abroad.

The new measures cover:

- Expanding the liability of postal parcel companies, including through chain liability for subcontracting and introducing a presumption of liability.
- Minimum remuneration for delivery companies depending on the means of transport they use for distribution. This minimum fee and its calculation method are yet to be defined in a royal decree. This will take into account, among other things, the following three elements:

a. The indexed minimum wage (without seniority premium) for the R1 employee class of drivers, plus employers' charges (Joint Committee 140.03 for third-party road transport). That minimum wage is currently EUR 13.85 per hour;

b. Transport costs according to the means of transport being used;

c. Other costs such as administrative, tax and insurance costs.

- The distribution time is capped at 9h per day and 56h per week, with the total time over two weeks not exceeding 90h.
- The obligation to use a time-recording system that records the start and end time of parcel distribution. The National Social Security Office is responsible for elaborating the modalities of this system.
- The creation of an electronic platform by the National Social Security Office to facilitate compliance with the new control measures.
- The registration of certain data every six months with the Belgian Institute for Postal Services and Telecommunications (BIPT).
- Appointment of a coordinator, who will inform the deliverers and be responsible for a vigilance plan to prevent violations of this law. A royal decree must further elaborate this measure.

2 Court Rulings

2.1 Immediate dismissal – severance pay – discrimination

Belgian Constitutional Court No. 13/2024, 25 January 2024

Article 39 of the Employment Contracts Law of 03 July 1978 regulates, among other things, the indemnity in lieu of notice to be paid by the employer if an employment contract of indefinite duration is terminated with immediate effect without respecting

the legal notice period and without being able to invoke a serious fault (gross misconduct) that justifies the immediate dismissal. In principle, such severance compensation must be calculated on the basis of the employee's salary at the time of dismissal.

It followed from Article 39 of the Employment Contracts Law, which was in force until 10 November 2022, that when the working hours of an older employee aged 55 years and older were reduced to part-time work pursuant to Collective Bargaining Agreement No. 103, concluded in the National Labour Council on 27 June 2012, he/she was only entitled to severance compensation based on his/her salary for part-time work in the event of immediate dismissal.

At the same time, Article 105 of the Social Recovery Law of 22 January 1985 provides that when an employee starts working part time due to parental leave, severance pay in the event of immediate dismissal should not be calculated on the individual's part-time pay but on his/her full-time pay, without taking the reduction in working hours into account. Article 105 was amended following the CJEU ruling C-116/08, 22 October 2009, Meerts.

The question the Belgian Constitutional Court reviewed at the request of an older part-time employee with a so-called landing job (end-of-career-job) was whether the difference in treatment violated the constitutional principle of equality. The Constitutional Court ruled that it did not, in part because older workers with part-time end-of-career jobs are additionally protected against dismissal as a result of the employee's choice to work part time with the employer's obligation to pay an additional severance payment equal to six months' pay under Article 21 of CBA No. 103.

The Law of 07 October 2022 transposing the Work-life Balance Directive 2019/1158 amended Article 39 of the Employment Contracts Law from 10 November 2022, by providing that the severance to be paid for an older employee who chooses to work part time as part of an end-of-career job must also be calculated at full-time wages in the event of immediate dismissal (see Memory of Understanding, *Parliamentary Documents*, Chamber of Representatives 2021-22 No. 55-2808/001, p.31).

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

An employee who resigns to enjoy early retirement in principle retains the right to payment for annual leave not taken. First of all, the CJEU ruled that the manner or reason for the termination of the employment relationship is irrelevant to the retention of entitlement to payment for annual leave not taken. A distinction according to the manner or reason for the termination cannot be justified under the Working Time Directive 2003/88/EC. Next, the CJEU examined under what conditions the employee's failure to take annual leave may result in the loss of the right to financial compensation for leave not taken once the employment contract ends. Based on the fundamental right to annual leave as set out in the second paragraph of Article 31 of the EU Charter and with reference to the Max-Planck-ruling CJEU case C-684/16, 06 November 2018, the Court ruled that only a worker who knowingly and in full knowledge of the consequences of failure to take leave may lose that right. In doing so, the employee must have had an effective opportunity to take his/her leave and, if necessary, the employer must have formally encouraged him/her to take that leave. Only under those conditions will entitlement to payment for annual leave not taken be lost.

The Belgian labour law for the private sector seems to be consistent with European employment law as interpreted by the ECJ. The right to paid leave is vested in the worker, notwithstanding any contrary agreement. The employee is prohibited from waiving the annual leave days to which he/she is entitled. Thus, the employee cannot

renounce annual leave pay in advance that will be due at the end of his/her employment contract (see Article 2 of the Annual Leave Law of 28 June 1971).

If the (white collar) employee did not have the opportunity to take all or part of his/her annual leave days by the end of his/her employment relationship, financial compensation for the days not taken will be paid to him/her by the employer no later than 31 December of the current holiday year. This also applies in case of termination of the employment contract, regardless of the reason or manner in which the contract ends (Article 67 and 67bis of the Royal Decree of 30 March 1967 on annual leave). When a white collar employee's employment contract ends, regardless of the reason for the termination or the manner in which that contract of ends, his/her employer shall, upon the employee's departure, pay his/her pro rata temporis in advance, which is vested in the entitlement to vacation pay (Article 46 Royal Decree of 30 March 1967 on annual leave).

Blue collar workers always receive their annual leave pay within the social security system. There are no known legal problems in this regard.

In the public sector, in the event of voluntary resignation of a public servant, there are again no known legal problems with the payment of annual leave pay due to him/her.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

A Decree of the Council of Ministers established new competences of the Employment Agency related to labour migration.

1 National Legislation

1.1 Employment Agency

The Council of Ministers adopted the Decree on Amendments and Supplements to the Regulations of the Employment Agency (promulgated State Gazette No. 2 of 05.01.2024) on 02 January 2024. It established a new Article 23a on the competences of the Employment Agency in the field of labour migration. The "Permits and Labour Migration" Directorate ensures balanced international labour migration to meet the needs of those seeking and offering labour on the national labour market by implementing procedures for permitting or denying access to the labour market in Bulgaria to foreigners in accordance with the Law on Labour Migration and Labour Mobility, the Law on Foreigners in the Republic of Bulgaria and the Law on Promotion of Employment. The Agency:

1. Accepts, processes, conducts official and other checks, prepares opinions, letters and draft decisions of the executive director for issuing, continuing, rejecting or revoking work permits or performing freelance activities for workers -- citizens of third countries, in the Republic of Bulgaria;

2. Prepares opinions and letters of the executive director to the Directorate "Migration" in the Ministry of Internal Affairs regarding the presence or absence of grounds for exercising highly qualified employment, detected irregularities in the documents or the need for additional documents to be provided by the applicant in connection with the implementation of the procedure for the authorities of the Ministry of Internal Affairs to issue a permit to a foreigner for long-term residence and work of the type "European Union Blue Card";

3. Prepares opinions and letters of the executive director to the Directorate "Migration" in the Ministry of Internal Affairs regarding the presence or absence of grounds for providing access to the labour market, irregularities found in the documents or the need for additional documents to be provided by the applicant in the procedure for issuing a permit to a foreigner for long-term residence and work of the type "Single permit for residence and work";

4. Prepares opinions and letters of the executive director to the "Migration" Directorate in the Ministry of Internal Affairs regarding the presence or absence of grounds for granting access to the labour market, irregularities found in the documents or the need for additional documents to be provided by the applicant in connection with the implementation of the procedure for issuing a permit for long-term residence of a foreigner for the purpose of employment as a seasonal worker;

5. Prepares opinions and letters of the executive director to the Directorate "Migration" in the Ministry of Internal Affairs regarding the presence or absence of grounds for providing access to the labour market, irregularities found in the documents or the need for additional documents to be provided by the applicant in connection with the implementation of the procedure for issuing a permit for a foreigner transferred during an intra-corporate transfer, with the right of long-term residence;

6. Carries out procedures for processing documents for short-term employment without a work permit, as well as such through registration;

7. Maintains a system for monitoring the work permits of foreigners and the permits of foreigners to carry out freelance activities in the Republic of Bulgaria;

8. Participates in the development of projects of international contracts for the exchange and employment of labour force and the procedures for their implementation; participates in international negotiations on the conclusion and implementation of international contracts;

9. Jointly with the Main Directorate "Employment Services" carries out employment activities under international agreements to which the Republic of Bulgaria is a party, in cases where the procedures for their application provide for the issuance of work permits to foreigners in the Republic of Bulgaria;

10. Carries out cooperation and exchange of information with the relevant departments of other countries, responsible for the control and conditions of the employment of foreigners.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The judgment in case C-218/22 CJEU of 18 January 2024 will not have any implications for Bulgarian legislation and national practice in relation to the interpretation of Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union.

There is no prohibition in Bulgaria on the payment of compensation for paid annual leave not taken for reasons relating to the control of public expenditure and the organisational needs of the public employer of limiting public expenditure, the organisational needs of the employer and reasons for termination of the employment relationship (including when the employee voluntarily terminates it). The rules on deferral of leave in national legislation are identical for employees and civil servants.

Pursuant to Article 176 of the Labour Code, the use of paid annual leave can be postponed by the employer to the following calendar year (for important production reasons) and by the worker (by using an alternative type of leave or upon his/her request with the employer's consent). If the leave was postponed or was not used by the end of the calendar year to which it relates, the employer is required to ensure its use in the following calendar year, but no later than six months as of the end of the calendar year for which the leave is due. If the employer fails to do so, the employee is entitled to determine when he/she will take leave by notifying the employer in writing at least 14 days in advance. Civil servants have the right to determine when they will take their postponed leave by notifying the appointing authority seven days in advance during the following year (Article 59(6) of the Civil Servants Act). For certain categories of civil servants, it is provided that if they do not request the use of deferred leave, the head of the service is required to issue an order and direct the use of deferred leave.

Article 176a of the Labour Code stipulates that where paid annual leave or a part thereof is not used by the time of expiration of two years after the end of the year in which the said leave was accrued, regardless of the reasons therefor, the entitlement to use such

leave shall extinguish by prescription. If the paid annual leave is postponed under the terms and procedure of Article 176(1), the employee's right to use it expires due to lapse of time upon the expiry of two years as of the end of the year in which the reason to not use it would have ceased to exist. The rules are identical for civil servants (Article 59a of the Civil Servants Act).

Upon termination of the employment relationship, the employee is entitled to financial compensation for any unused paid annual leave for the current calendar year in proportion to the time assimilated to the length of employment service and for any unused leave deferred in accordance with the procedure set out in Article 176, the right to which has not lapsed by prescription. The same rule is established for civil servants (Article 61(2) of the Civil Servants Act and special laws on the defence and security system. There is an exception for officers and sergeants in the National Security Service -- compensation is due for unused leave days for the current year and for the previous year (Article 78(3) of the National Security Service Act).

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The Minister of Labour, Pension System, Family and Social Policy has issued the Regulations on a United Electronic Record of Work based on the Act on Suppression of Undeclared Work.

(II) The Regulations on Authorisations for Occupational Health and Safety Affairs has been amended.

(III) The judges are 'on strike'.

(IV) The Collective Agreement for the Wood and Paper Industry has been concluded.

1 National Legislation

1.1 Regulations on a United Electronic Record of Work

The Minister of Labour, Pension System, Family and Social Policy has issued the Regulations on a United Electronic Record of Work (Official Gazette No 8/2024) based on the Act on Suppression of Undeclared Work (Official Gazette No. 151/2022).

The United Electronic Record of Work stores data on self-employed persons, workers and other persons who perform work via digital work platforms.

1.2 Amendment to the Regulations on Authorisations for Occupational Health and Safety Affairs

The Regulations on Authorisations for Occupational Health and Safety Affairs have been amended (Official Gazette No. 9/2024). The amendments refer to the conditions for the performance of occupational health and safety duties. The novelty is that as a rule, experts for the occupational health and safety must be full-time employees. Exceptionally, they can be part-time employees when they are part-time pensioners at the same time, according to the law on the rights of Croatian veterans from the Homeland War.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

Article 82 of the Labour Act (Official Gazette nos 93/2014, 127/2012, 98/2019, 151/2022, 64/2023) is the provision of Croatian law relevant in the context of the facts of the *Comune di Copertino* case. It states:

(1) In case of termination of the employment contract, the employer is required to pay an allowance in lieu of annual leave to a worker who has not used his/her annual leave.

(2) The allowance referred to in paragraph 1 of this Article is determined in proportion to the number of days of unused annual leave.

This provision applies to the employees in the private and public sector since the allowance in lieu of annual leave is not regulated by separate pieces of legislation in a different manner (derived from Article 1 of the Labour Act). Therefore, Croatian law in this context is in line with the CJEU's judgment in this case.

4 Other Relevant Information

4.1 The 'strike' of judges

Croatian judges are protesting their rate of salaries, see here and here. Since the salary increases in the range requested by the judges were not accepted, they are only dealing with cases in which citizens and entrepreneurs are threatened with irreparable damage.

4.2 Collective Agreement for the Wood and Paper Industry

The Collective Agreement for the Wood and Paper Industry (Official Gazette No. 5/2024) has been concluded for an indefinite period.

Cyprus

Summary

(I) The CJEU case on an allowance in lieu of leave has been issued; the Parliamentary Committee has proposed to review the working hours of shop workers but the Minister of Labour refuses to change the shop working hours, as the current situation is the 'new normal'.

(II) Cyprus will move towards iJustice.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

In this judgment, the Court decided that a worker who was not able to take all of his or her days of paid annual leave before resigning is entitled to an allowance in lieu of that leave. Member States cannot rely on reasons related to the controlling of public expenditure to restrict that right.

This ruling is likely to have some implications on Cypriot employment law. In the Republic of Cyprus, the *Laws on Annual Leave with Pay* regulate the general framework for paid leave. The law purporting to transpose the WTD, the *Law on Organisation of Working Time*, hereafter WTL, is also relevant. The WTL 7(3*)* provides that all employees are entitled to four weeks paid leave, in accordance with the terms and conditions provided by the legislation or the collective agreements and/or the practice on obtaining the right and granting leave. 5(1) of the Law on Paid Leave provide for the duration of the leave. The duration of an employee's leave who has worked not less than 48 weeks in the leave year is 20 working days in the case of an employer who has worked a 5-day week and 24 working days in the case of an employer who has worked a 6-day week. Provided that where an employee is entitled by law, custom, collective agreement or otherwise to a period of leave longer than the days provided, the number of days in such a longer period shall be substituted for the days provided for in this Article as long as the law, custom, collective agreement or otherwise remains in force.

As for the minimum period and accumulation of paid leave, 7(1) of the Cypriot Law on Paid Leave asserts that a leave shall include a continuous period of not less than nine days. Also, 7(1) allows—agreement between the employer and the employee—that leave may be accumulated up to a maximum of the leave to which the employee is entitled, namely two years.

4 Other Relevant Information

4.1 Working hours of shop workers

The Parliamentary Committee on Labour and Social Insurance has tabled the issue of working time of shop workers and has invited the Minister of Labour to suggest a change in the working hours of shops. However, the Minister, Yiannis Panagiotou, dismissed the proposal and ruled out the possibility of changing the shop opening hours. He claimed that any change in the shops' working hours will create a disruption to business and the economy, and that people are already used to the current hours, which has become the new normal. MPs, small shop owners and trade unionists strongly disagreed with this. Parliament will continue discussing the operation of shops on Sundays, in connection with the compensation of workers (for more information, see *Philenews, 31 January 2024*).

Currently, Law 155(I)/2006 regulates shop operations and employment standards, addressing issues related to minimum standards, including working hours. The Law empowers the Minister of Labour to issue a decree on the working hours in tourist areas/zones, the tourist season, opening hours and holidays, including Easter Sunday, applicable to tourist establishments based on recommendations of district advisory committees. The law provides that the boundaries of tourist areas/zones, the tourist season, opening hours and holidays, including Easter Sunday, applicable to tourist establishments shall be determined by regulations issued by the Council of Ministers, based on recommendations of the Advisory Committees, see Section 27. In 2013, the Minister of Labour issued five decrees (Decree 239/2013 is available here; Decree 240/2013 is available here; Decree 241/2013 is available here; Decree 242/2013 is available here; Decree 243/2013 is available here), essentially treating most municipalities of Cyprus as tourist zones, allowing the liberalisation of working hours contrary to the restrictive hours provided in the law, in guise of addressing the economic crisis and unemployment at the time.

The Small Shopkeepers' Association (POVEK) attempted to challenge the decrees as unconstitutional, but the Supreme Court rejected their claim. Moreover, when Parliament issued passed legislation that aimed to remove the discretion of the Minister by issuing criteria on 'tourist zones', which was rejected by the Supreme Court as a violation of the rule of the separation of powers: in 2015, the Supreme Court, following disputes between the trade unions and the government on the hours of operation of retail shops, ruled that the law regulating the hours of operation of retail shops is unconstitutional. The Court decided that the Minister of Labour has the power to regulate the hours of operation of shops (and hence the working hours of their employees) without interference from Parliament, relying on the principle of the separation of powers. In 2016, when the Supreme Court was requested to rule again on the issue of the constitutionality of the legislation regulating the working hours of shops, a matter that had divided shop owners and employers of large stores on the one side, and small shop owners and worker representatives and trade unions, on the other. The matter at issue this time related to whether the House of Representatives has the right to reject rules proposed by the government on regulating the hours of operation of retail shops. The attorney general argued that the matter of regulation of the working hours of shops in tourist and other areas is an exclusive matter of concern for the executive and that the legislature was not entitled to reject the rules proposed for approval to the House, as this would amount to a violation of the principle of the separation of powers. He based this on the decision of the Supreme Court in December 2015. However, the House argued that this was nonsensical, as it would amount to a violation of the democratic right to approve or reject the rules proposed to it. The majority of the Court decided that the matter could not be decided, as the President had failed to refer the matter to the Court within the necessary time limit. The minority disagreed and considered that it was within the right of the House to reject the rules. As a result, there is currently no law regulating the working hours and opening hours of retail shops.

At present, employees who work on Sundays in shops that operate on a 7-day basis, i.e. all days of the week, are not paid overtime on Sundays, i.e. at a rate of one to two, since these employees work on a five-day basis: Sundays are included as normal working days, but taking two 24-hour weeks as rest periods (off) and with 38 weekly working hours.

During the Parliamentary Labour Committee, MPs raised questions about workers' labour rights which are violated as a result of the current arrangement, which has been in place since 2013. The Committee Chairman Andreas Kavkalias stated that workers are not paid appropriately for working on Sundays.

The head of the Labour Relations Department of the Ministry of Labour, Andis Apostolou, stated that the law was not affected by the interventions that were made on the issue of shop opening hours. He asserted that the 38 weekly working hours in shops, and the daily 8 hours of work allowed the employee to work up to two hours of overtime on a daily basis. The law provides that if an employee works overtime on weekdays, each hour in addition to the two hours he or she can work is compensated at a rate of one and a half. With regard to Sundays, the law provides that in general stores that are open seven days a week, the worker is entitled to a 24-hour rest period every other Sunday and if (s)he is required to work during the 24-hour rest period, that is, if (s)he accepts to work a second consecutive Sunday, (s)he must be compensated for each hour at double time. A few infringements of the current law have been reported. From the inspections carried out, the head of the Labour Relations Department stated that the provisions of the legislation concerning workers' remuneration and other rights seem to be generally respected. The percentage of criminal cases registered in court by the Ministry for violations involving workers is below 1 per cent, with over 2 000 labour inspections a year. Responding to suggestions that there were legal loopholes in the legislation on working hours, he clarified that the possible need to codify the entire framework does not relate to workers' rights, which continue to be enshrined in legislation.

After the meeting, the Chairman of the Parliamentary Labour Committee, AKEL MP Andros Kafkalias, issued a statement noting the necessity of dialogue with social and advisory committees on shop opening hours. He said that the current regime which does not regulate working hours on Sundays creates a serious legal vacuum that must be addressed. The Parliamentary Labour Committee has discussed the issue concerning the opening hours of retail shops, the problems that arise and ways of dealing with them. This is an important issue that affects society, the economy, workers, micro and small businesses, which pay a huge price for the operation of general stores on Sundays because of the unfair competition that is created. He criticised the fact that the Minister considers the issue to be irrelevant at a time when there is a legal vacuum in relation to the application of these hours.

The government has made it clear to the Commission that it has no intention of changing the shop opening hours, something the opposition party AKEL opposes. The MP stated that AKEL considers that the operation of shops on Sundays constitutes a problematic regulation, which should be amended and has called for dialogue with the social partners and with the statutory advisory committees. He pointed out that the current legal loophole that exists, since the Supreme Court ruled that the law Parliament passed was unconstitutional, since no decree is currently in force that stipulates that general stores are allowed to be open on Sundays. He invited the representative of the Legal Service to take a position on the matter, as he was not satisfied with the answer provided. He reiterated that AKEL does not consider it 'a normality' for shops to operate on all Sundays of the year, but clarified that there is no intention on the part of Parliament to question the executive's competence to determine the opening hours of shops, which was also enshrined in the Court's decisions. Moreover, the Chair stated that the MPs in the Committee stressed the need to strengthen controls on the conditions of employment of workers in this sector and to strengthen their position through the negotiation of collective agreements and/or regulations in legislation.

4.2 The Ministry of State announces temporary transition to the iJustice system

The Ministry of State for Research, Innovation and Digital Policy has decided on temporary transition towards the iJustice system from Monday, 29 January 2024.

The various processes and technical preparations required for the smoothest possible transition are currently underway, and within the day, an announcement is expected by the Supreme Court is expected shortly as to how the courts shall operate within and use the system.

It also announced the corrective actions of the contractor of the iJustice system will be examined in depth and in detail, and the operation of the system will be evaluated as a whole, as the objective of its full restoration remains.

Czech Republic

Summary

(I) With effect from 01 January 2024, several changes to labour legislation have come into force. This includes, specifically, the introduction of holidays in agreements on work performed outside the employment relationship, the regulation of uninterrupted weekly rest, the introduction of liability in the construction industry, and a change in the definition of illegal work.

(II) The minimum and guaranteed wage have also been increased and the lump sum amount of compensation for teleworking has been updated.

1 National Legislation

1.1 Act No. 281/2023 Coll. - transposing amendment to the Labour Code

The Labour Code introduces the right to leave for employees who work under agreements on work performed outside the employment relationship in the same way as for employees who have an employment relationship. Moreover, the continuous weekly rest period has been modified in response to the CJEU's case law (additional details on the content of these amendments are available in the December 2023 Flash Report).

1.2 Act No. 408/2023 Coll., amendment to Act No. 435/2004 Coll., on employment and other related acts

This amendment concerned employment agencies' obligations, changes in the definition of illegal work and introduced the liability of contractors in the construction industry for unpaid wages (more details on the content of these changes have been provided in the December 2023 Flash Report).

1.3 Act No. 413/2023 Coll., amending the regulation of working hours of doctors and other healthcare workers

The amendment to the Labour Code allows selected healthcare workers to work continuously for up to 26 hours, with subsequent compensation for an uninterrupted daily rest period (more on the content of these changes are discussed in the December 2023 Flash Report).

1.4 Government Decree 396/2023 Coll. increasing the minimum wage and the guaranteed wage

The minimum wage has been increased to CZK 18,900 per month (EUR 763) and CZK 112.50 per hour of work (EUR 4.54). At the same time, the guaranteed wage in the 1st, 2nd, 3rd and last 8th job groups has been increased. The wages for the other work groups have not been increased. According to Section 112 of the Labour Code, the guaranteed wage is the lowest wage level for a given work group (1-8).

1.5 Decree of the Ministry of Labour and Social Affairs No. 397/2023 Coll., on determining the amount of lump sum compensation for teleworking

The lump sum compensation for teleworking has been updated to CZK 4.50 per hour of teleworking (EUR 0.18). The Decree is issued periodically, always with effect from 1 January of the calendar year, on the basis of Section 190a(4)(a) LC. The amount relies on the Czech Statistical Office's data on household consumption adjusted for the teleworking model for one adult in an average household in the Czech Republic per hour.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The CJEU's ruling does not conflict with Czech law. According to Section 211 et seq. of the Czech Labour Code, leave is always determined and granted to an employee by the employer. Therefore, it is the employer's responsibility to ensure that the employee is granted the required term of leave in accordance with the law, either in the current or following calendar year. According to S. 218 LC, failure by the employee to take leave is always the employer's responsibility and cannot be attributed to the employee. It is important to note that the right to leave is not forfeited if it is not taken. Upon termination of employment, the employee must be compensated for leave not taken that corresponds with his or her average earnings, as stated in S. 222 LC. It is worth noting that the reason for the termination of the employee's employment is irrelevant in this regard. National law, a collective agreement, an internal regulation or an agreement between the employer and the employee cannot limit the right to leave or the right to compensation for leave not taken by the end of the employment relationship.

If an employee resigns or is dismissed from a managerial position, the employment relationship does not end and can only be terminated subsequently by agreement or by notice (S. 73a (2) LC). Even during the notice period, an employee may still be granted leave.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

Denmark has adopted amendments to the Working Time Act, which introduce a new duty for the employer to measure employees' daily working time. Furthermore, the new Act implements the opt-out possibility of the maximum weekly working time for certain categories of workers and under specific conditions.

1 National Legislation

1.1 Amendment to the Act on Working Time

As mentioned in the September 2023 Flash Report, the Danish legislators put forward a proposal to change the Danish Working Time Act.

The amendments were adopted in January 2024 after an ordinary parliamentary process. Only a few changes were made to the original proposal which was subject of consultation in the fall 2023. The scope and interpretation of the new rules have been clarified to some extent in the final version of amendments.

The new rules will come into force on 01 July 2024.

The Working Time Directive is implemented in three statutory acts in Denmark. Since the Directive's adoption, CJEU has ruled on its interpretation in many judgments. Some of these judgments, including the decision in CJEU case C-55/18, 14 May 2019, CCOO on the registration of daily working time, have given rise to considerations in relation to the implementation of the Working Time Directive in Danish law.

The Danish social partners have been involved in the development of this new legislative amendment, and the proposal was based on an agreement between the social partners on how to adjust the Danish working time rules to ensure compliance with the developments at the EU level.

The main features of the new legislation are:

1. Introduction of individual opt-outs of the maximum weekly working time (Article 22) under certain conditions.
2. A duty for employers to register employees' daily working time (as a consequence of the CCOO judgment in CJEU case C-55/18).
3. Introduction of the exemption in Article 17 for maximum weekly working hours for autonomous workers in leading positions.

Denmark has not yet applied the individual opt-out possibility for maximum weekly working time granted in Article 22 of the Working Time Directive. With a new Section 4a in the Working Time Act, the amendments implement an individual opt-out possibility for some workers under specific preconditions.

Section 4 a (1) states:

> *"The most representative labour market parties in Denmark may, while respecting general principles for protection of employees' safety and health, in line with subsections 2-4, agree that within this collective bargaining area, individual agreements may be concluded which entail that the employee may work more than 48 hours a week on average."*

The fact that individual opt-outs can only be agreed if the most representative social partners have 'paved the way' in a collective agreement is a strong protection against

abuse and limits the scope of opting-out which both the workers and management representation can agree on. The scope of possible opt-out is further limited in Subsection (2).

Section 4a (2) restricts the opt-out possibility to employees who are covered by collective agreement provisions, who perform standby/on-call work, *and* hold essential functions, which reflects the areas listed in Article 17(3), litra a-c, in the Working Time Directive.

The opt-out option is not only limited by the requirement of agreement by the most representative social partners, but is further limited to certain types of work functions and in certain areas of industries.

According to Section 4a(3), an employee, who via an individual agreement has consented to work more than 48 hours per week on average, can at any time with a reasonable notice withdraw his or her consent. A refusal to give consent to work more than 48 hours or a withdrawal of consent, cannot be held against that employee (*må ikke lægges til last*).

The wording of the provision in Section 4a(3) is not fully comparable with victimization clauses in other employment acts, such as the Equal Treatment Act. The preparatory works do not describe which types of actions would be considered behaviour 'held against the employee'. The preparatory works only state that *dismissal* for not consenting can be challenged as unfair dismissal. The preparatory works do not discuss or indicate that other forms of repercussions can also challenge 'free' and 'voluntary' consent, such as replacement, change of rosters or of job functions.

There is no discussion on how the employer must ensure that consent is given voluntarily, and whether 'voluntary' consent must e.g. align with the requirements of consent in employment relationships under the GDPR.

Section 4a(4) stipulates that the average weekly working time may not exceed 60 hours calculated over a 4-month period for employees who have consented to working more than 48 hours per week. The reference period may be extended to up to 12 months in the collective agreement for objective and technical reasons and with regard to the planning of work. Section 4a(5) gives the most representative social partners an option to extend the average weekly working time beyond 60 hours, on average, for workers who have given consent.

The fact that only the most representative parties are allowed to exceed the 60-hour limit is considered strong protection against abuse, and a guarantee that the working rosters will continue to be balanced.

The employer must maintain up-to-date registers of employees who are covered by the opt-out of the 48-hour rule, and must make them available to the Danish Working Environment Authority (DWEA). Upon request, the DWEA shall be provided with copies of the individual agreements, cf. Section 4b(5).

There has so far not been a duty for employers to register employees' working time. Such a duty is introduced by the amendments, as an implementation of the CCOO-ruling C-55/18.

The amendment Act introduces a new Section 4b. The provision stipulates that the employer must introduce an objective, reliable and accessible working time registration system, which allows measurement of each employee's daily working time. The purpose is to ensure compliance with applicable rules on daily and weekly rest periods and maximum weekly working time.

The preparatory works explain that the employer has the freedom to choose the methods for measuring working time.

The obligation to register includes, *inter alia*:

- The employer must ensure that the employee can access their own information in the working time registration system, cf. Section 4 b (2).
- The employer must keep the registered information for five years after the expiry of the respective period that forms the basis for calculating the employee's average weekly working time, cf. Section 4 b (3).
- In an answer to a parliamentary question, question No. 5, the Minister of Employment confirmed that it is possible for employers to choose a system, where the daily working time must only be registered by the employee on days on which the actual working time deviates from the agreed/scheduled working time.
- In an answer to parliamentary question No. 6, the Minister of Employment specified that the requirement to measure working time concerns 'the daily working time' and thus not when the work is performed during the day (time of commencement and end of work). The employer is free to *choose* a method of measurement that includes the registration of the exact time periods of work during the day, but it is sufficient under the new rules to register the employee's daily working time. Thus, according to the minister, it suffices to register the total number of hours worked during a 24-hour period, e.g. eight hours, to adhere to the new requirement of registering and measuring.

As mentioned, the WTD has been transposed through several national statutory acts. The maximum weekly working time is transposed in the Working Time Act, and, when relevant, in collective agreements. The daily and weekly rest periods are transposed in the Working Environment Act, and, when relevant, in collective agreements.

So far, the option to exempt certain autonomous employees from the 48-hour weekly maximum, cf. WTD Article 17 (1), has not been used in the Danish Working Time Act.

The options to exempt certain autonomous employees from the daily and weekly rest periods has been used in a Ministerial Order to the Working Environment Act.

As pointed out in the preparatory works to the amendments to the Working Time Act, it is possible to use the exemption for daily and weekly rest periods in connection with implementation of the Working Time Directive in collective agreements.

The new provision in the Working Time Act, Section 1(6) introduced the option in Article 17 to exempt certain workers from the requirements laid down in Sections 3, 4 and 5 of the Danish Working Time Act, cf. Article 17(1)(a) WTD. The provision reads:

> *"With due regard to the general principles of the protection of workers' health and safety, Sections 3, 4 and 5 do not apply, if the duration of the working time due to specific characteristics of the work performed is not measured or predetermined or can be determined by the worker themselves, in the case of employees that have autonomous decision-making power or hold managerial functions",* cf. Article 17(1)(a) WTD.

Section 3 in the Danish Act comprises the right to take daily breaks, Section 4 the maximum weekly working time of 48 hours on average over four months, and Section 5 covers the maximum working time for night work.

The new Section 1(6) thus supplements the existing exemptions and also exempts this group of employees in leading or otherwise autonomous positions from the maximum weekly working time.

This means that the employer is not required to register the daily working time of this groups, as they are already exempt from the rules on daily and weekly rest periods in the Ministerial Order to the Working Environment Act.

The new Section 1(6) further states that the employment contract must explicitly state that Sections 3-5 of the Working Time Act do not apply.

The wording of the new Section 1(6) is one of the new provisions discussed at length, and where neither the wording of the provision (copied from the wording of Article 17(1)(a)), nor the preparatory considerations of the minister, nor any of the questions asked during the parliamentary discussions seem to give a very precise answer about which groups of employees are expected to be exempt from the 48-hour weekly maximum.

In the preparatory works, the Danish Ministry of Employment explains that the scope of Article 17 depends on an individual assessment of what applies in terms of work planning in the specific employment relationship. And that the scope of exemption in the Danish Working Time Act is thus expected to be quite limited.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The case concerned an Italian employee in the public sector, who was denied allowance in lieu of days of leave not taken by the end of the employment relationship which he resigned from to take early retirement.

An Italian decree prohibited payment in the event of voluntary resignation due to the need to control public expenditure and the organisational needs of the public sector, including putting an end to uncontrolled use of financial compensation for leave not taken.

At the time of termination of the employment relationship in 2016, the Italian employee had 79 days of paid annual leave that he had not used, and which were accrued during 2013–2016.

The CJEU reiterated that a worker's right to annual leave is a particularly important principle of EU social law, protected in Article 7 of the Working Time Directive 2003/88 as well as in Article 31(2) of the Charter.

Member States are to lay down conditions for the exercise of the right, but may not make that right subject to any preconditions. The Court recalled that the only conditions for entitlement to allowance in lieu of Article 7(2) are, *first*, that the employment relationship has ended, and *second*, that that the worker has not taken all annual leave to which he or she was entitled at the expiry of that relationship.

The reasons why the employment relationship ended are not relevant.

The Court found that in the present case, it seemed that the Italian legislation lays down a criterion which goes beyond those of Article 7(2) of the WTD, by prohibiting payment in all situations where the worker voluntarily terminates his or her employment relationship.

The CJEU also expressed that the right to paid annual leave may be lost at the end of a reference period (or similar) by the worker if the worker deliberately has refrained from taking his or her leave and was fully aware of the consequences hereof.

The employer, however, bears the burden of proof that the worker is actually given the opportunity to take the leave he or she is entitled to, has been encouraged hereto, and was fully informed that the right to leave may otherwise expire.

In conclusion, the CJEU found that the right to annual leave under the Directive and the Charter preclude the Italian legislation, both for the last year of employment and previous years.

The recent CJEU ruling is not particularly relevant in the Danish context, although it presents the outer limits of room for manoeuvre for public employers to introduce any further restrictions on the right to annual leave.

Under Danish law, the right to annual leave in the Working Time Directive is implemented in the Danish Holiday Act.

Section 16(4) stipulates, that:

> *"an employee, whose employment relationship is terminated, is entitled to holiday allowance as laid down in Section 19 for the accrued annual leave, which the employee has not taken"*, cf. Section 16(2).

It follows from Section 16(2) that holiday allowance is calculated as 12.5 per cent of the employee's gross salary.

The Danish Holiday Act applies both to private and public sector employers. Public employers have not, with a view to reducing public expenditure or similar, introduced further limitations on the right to receive outstanding holiday allowance upon retiring.

Thus, the Danish rules on the right to take outstanding annual leave allowance upon retiring from the labour market is in line with the EU law acquis.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Construction site workers must be registered using a specific card. The purpose of this is to avoid any possibility to not pay taxes on wages.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The judgment addressed the issue of verifying compliance of legal regulations that prohibit financial compensation for unused annual leave days.

According to the Estonian Employment Contracts Act (ECA), an employee is entitled to 28 calendar days of paid annual leave. The right to use leave can be postponed for up to one year. However, after one year has lapsed, the leave expire, and the expired leave cannot be financially compensated. If the employee's employment contract is terminated and he/she was not able to take his/her annual leave, the unused annual leave days will be financially compensated. The Employment Contracts Act does not limit this right to any reason for termination of the employment contract.

There are no specific restrictions to the compensation of unused annual leave days for public servants. There is also no possibility to reduce or limit compensation for unused leave days due to state budget considerations.

The regulation of the Estonian right to paid annual leave is in line with Directive 2003/88/EC and the CJEU's interpretation.

4 Other Relevant Information

4.1 Construction site workers

Upon the request of the Tax and Customs Board (MTA), a personal employee card has been introduced specifically for construction workers. This card will be used to register work on larger construction sites.

The card must be ordered by the employer. Starting from January 2024, every construction site worker working on a larger construction site must possess a working time registration card.

The purpose of registering working time using a single card is to ensure a fair competitive environment. This ensures that the construction site is operated by properly trained individuals, who are known to both the general contractor and the state, and who are paid a fair wage.

The law already requires the general contractor to register major construction sites and the construction contract chain in the MTA's e-services environment. If the construction site workers have a card, the general contractor can allow the use of a mobile app.

The use of cards is required on construction sites that are operational for more than 30 working days and where there are at least 20 people working simultaneously.

The construction industry has experienced an estimated tax loss of over EUR 20 million annually for many years. To address this issue, the MTA will use the data collected from employment chains, objects and employee registrations to conduct risk analyses, which will focus on identifying anomalies in the data and pinpointing objects that require further examination.

Finland

Summary

(I) The Ministry of Economic Affairs and Employment will appoint a tripartite working group to prepare legislative amendments that implement changes to the negotiation system that relate to the creation of an export-driven labour market model.

(II) In addition, the Ministry has commissioned a study that will assess the economic effects of alternative solutions to improve the status of foreigners picking wild berries in Finland.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

In Finland, there is no legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, would prohibit the payment to a worker of an allowance in lieu of the days of paid annual leave accrued.

4 Other Relevant Information

4.1 Legislative project launched to implement the Finnish labour market model based on the Government Programme

The Ministry of Economic Affairs and Employment will appoint a tripartite working group to prepare legislative amendments to implement changes to the negotiation system in accordance with the Government Programme. The government's aim is to promote the creation of an export-driven labour market model. In its programme, the government outlined that the Finnish labour market negotiation system needs to be developed. The government aims to strengthen the export-driven labour market model to boost Finland's long-term competitiveness.

According to the Government Programme, provisions will be laid down in the Act on Mediation in Labour Disputes (*Laki työriitojen sovittelusta*, 420/1962) so that the general level of pay adjustments cannot be exceeded by a settlement proposal issued by the National Conciliator's Office or by a conciliation board.

4.2 Study related to the status of foreign berry pickers begins

The Ministry of Economic Affairs and Employment has commissioned a study that will assess the economic effects of alternative solutions to improve the status of foreigners who pick wild berries in Finland. According to the first alternative, employment contracts will be required for berry pickers who come to Finland as seasonal workers. The second alternative is for pickers to come to Finland as independent actors.

The study will explore the effects of the two options on the sector, on the economic conditions of berry companies and on the status and earnings of berry pickers. The effects on public finances will be assessed as well. The study, which will be conducted by Pellervo Economic Research PTT, will be completed in April 2024, and it will support political decision-making on the alternative models. The Ministry of Economic Affairs and Employment has appointed a working group to guide the study and to produce a supplementary impact assessment in support of the decision-making and possible legislative amendments. The term of the working group will last from 12 January to 30 June 2024. A new working group will be appointed later to prepare a government proposal, depending on what is decided in terms of further preparations.

France

Summary

(I) The implementing decree concerning the refusal of concluding a permanent contract after a fixed-term or temporary contract has been issued. This makes it possible to apply measures that have been in force since December 2022. Employers are now required to notify France Travail of any refusal by an employee hired on a fixed-term or temporary contract to conclude a permanent contract.

(II) The Court de Cassation has further refined the control grid for monitoring "forfait-jours".

(III) The Court of Cassation has made an initial application of French social jurisprudence concerning the use of unfair evidence in legal proceedings.

(IV) The CNIL has fined AMAZON FRANCE LOGISTIQUE EUR 32 million for setting up an excessively intrusive system for monitoring employee activity and performance. The company was also fined for video surveillance without informing employees nor having a sufficient security system.

1 National Legislation

1.1 Refusal to conclude a post-fixed-term contract or post-interim permanent contract – employer's obligation to denounce the refusal.

The December 2022 Labour Market Law, French Labour Code, requires employers to inform France Travail (formerly "*Pôle emploi*", the public employment agency in France) of any refusal by a fixed-term employee (see Article L.1243-11-1 of the French Labour Code) or an employee with an interim contract (see Article L.1251-33-1 of the French Labour Code) to conclude a permanent contract. The law also states that an employee who refuses to conclude two open-ended contracts within a 12-month period is not eligible for unemployment benefits (see Article L.5422-1, I of the French Labour Code).

Although included in the French Labour Code a year ago, these provisions were not yet applicable. They have been applicable since 01 January 2024, when an implementing decree was published in the Official Journal of the French Republic on 29 December.

The decree specifies employers' obligations in this regard, adding two regulatory articles to the Labour Code: one for permanent contracts offered to fixed-term employees (see Article R.1243-2 of the French Labour Code), and one for permanent contracts offered to employees on an interim contract (see Article R.1251-3-1 of the French Labour Code). The following obligations apply in both cases:

- the employer must offer the employee a permanent contract before the end of the duration of the fixed-term or temporary contract;
- the employee must be given a "reasonable period" during which to take a decision; if he/ she fails to respond, the employee will be deemed to have rejected the offer of a permanent contract;
- in the event of an "express or tacit" refusal by the employee to conclude a permanent contract, the employer must inform France Travail thereof within one month.

As a reminder, to be eligible for unemployment benefits, the CDI job offered must be identical or similar to that the individual had held under the fixed-term or temporary

contract. The CDI remuneration must be at least equivalent as must the working hours, and the classification and workplace must be identical.

2 Court Rulings

2.1 "Forfait-jours"

Court of Cassation No. 22-13.200 (Social Division), 10 January 2024

A hotel manager had concluded an employment contract that provided for 217 days of work per year under the national collective agreement for hotels, cafes and restaurants (HCR).

His workload had led him to work more than six days in a row in specific months in 2016, 2017 and 2018, resulting in his agreed workdays being exceeded by 25 days in 2016, 26 days in 2017 and 30 days in 2018. Following his resignation in January 2019, the employee brought a number of claims before the court relating to the performance and termination of his employment contract, notably concerning the deprivation of effect of his "*forfait-jours*". The employee complained that his employer had failed to comply with the workload monitoring requirements set out in the collective bargaining agreement, and failed to:

- organise an individual annual meeting; in this case, no annual meeting had taken place in 2018;
- monitor the organisation of work to ensure that the volume and workload remain reasonable, and to check compliance with the rules on daily and weekly rest periods, thus disregarding the guarantees set in the collective agreement.

The Court of Appeals considered that:

> *"in view of the need to reschedule all directors' interviews due to company constraints, the postponement of the employee's interview to 6 March 2019 was acceptable and legitimate."*

However, the Court of Cassation overturned this decision. After recalling the legal requirements for monitoring the workload of employees with a fixed schedule and the obligation outlined in the collective agreement for HCR to conduct an annual follow-up interview, it deemed that the internal constraints invoked by the employer did not justify its shortcomings, especially considering that the employee had stated during his annual interview in 2017 that his workload had a 'serious impact at a level of 4/5' and pointed out occasional non-compliance with the rules on the weekly rest period, with repeated violations in 2018. Given the urgency to promptly schedule the annual interview for 2018, the Court of Appeals rejected the justification that internal company constraints justified the postponement of the annual interview to March 2019.

Concerning the employee's second grievance, the Court of Appeals determined that the employer had paid careful attention to the number of working days because:

- He had implemented a system to monitor the employee's working hours using tables, including alerts, and issued a warning in 2018 (115 weekly rest days to be taken instead of 104), with the employee subsequently benefiting from recovery days.
- He had imposed a 166-day fixed schedule in 2018 to offset the 51 days that had exceeded the fixed schedule between 2016 and 2017, and had paid for the 30 days that exceeded the 2018 fixed schedule.

- The human resources manager had visited on 17–19 May 2017, and 18–20 July 2017, to explain the operation of the fixed schedule file to the employee and had encouraged him to take his leave.

The Court of Cassation overturned the decision of the Court of Appeals. The Court of Cassation noted that the weekly rest period had not been respected on several occasions in 2016, 2017, and 2018, and the annual fixed schedule had been exceeded by 25 days in 2016, 26 days in 2017, and 30 days in 2018. The employer, having been informed of the employee's excessive workload, should have implemented measures to remedy it in a timely manner, which it had not done. The Court of Appeals could not rule that the recovery or payment of the days exceeding the fixed schedule and the alerts mentioned on the tables maintained by the employer (whose purpose was to compensate for the excessive workload rather than put an end to it) constituted such measures.

Court of Cassation No. 22-15.782 (Social Division), 10 January 2024

After noting that the collective agreement, dated 05 September 2003, allowing the use of a "*forfait-jours*" in the company, was not in compliance with legal requirements, the lower court judges proceeded to verify the employer's compliance with the obligations provided in the statutory scheme.

The judges observed several shortcomings. Firstly, the tracking tables did not accurately reflect the days worked by the employee, regardless of whether they were filled in by the employee, as the Labour Code specifies that they should be established under the employer's responsibility. Under these conditions, it was impossible for the employer to ensure that the workload was compatible with the daily and weekly rest periods. Therefore, it is not sufficient for the employer to implement a document to monitor working days, and have it validated by the employee; it must also be filled out correctly, and the responsibility for this lies with the employer.

Secondly, the employer had not met its obligation to organise an annual interview with the employee to discuss their workload. Again, it is the responsibility of the employer to prove that this interview was properly conducted.

As a result, the Court of Appeals concluded that the employee's days-based fixed schedule agreement was null, a decision that was approved by the Court of Cassation.

2.2 Unfair evidence

Court of Cassation No. 22-17.474 (Social Division), 17 January 2024

In a ruling of 17 January 2024, the Social Chamber applied the position for the first time established by the Court of Cassation at the end of 2023 on the use of unfair evidence in court.

In the present case, an employee took legal action in May 2017 to terminate his employment contract, alleging psychological harassment by his employer in the context of the dismissal of his superior. Following this accusation, an investigation was conducted by the Committee for Hygiene, Safety, and Working Conditions (CHSCT), which existed at the time of the events, with the participation of the occupational physician and the labour inspector. The employee was interviewed by employee representatives during this investigation, and secretly recorded this interview.

Declared unfit for his position in October 2018, he was dismissed for incapacity and impossibility of reassignment at the end of 2018. To obtain judicial termination of his contract and, alternatively, the nullity of his dismissal as a result of psychological harassment, the employee presented the transcript of this clandestinely recorded interview. However, this piece of evidence was excluded from the proceedings by the appellate judges. The employee filed an appeal in cassation.

The Social Chamber reiterated the principle established by the Plenary Assembly on 22 December 2023: in a civil trial, the illegality or disloyalty in obtaining or producing a means of evidence does not necessarily lead to its exclusion from the proceedings. The judge must, when requested, assess whether such evidence compromises the fairness of the procedure as a whole, balancing the right to evidence and conflicting rights, with the right to evidence justifying the production of elements that only infringe on other rights if such production is essential to its exercise and the infringement is strictly proportionate to the pursued objective.

In this case, the occupational physician and the labour inspector had been involved in the investigation conducted by employee representatives, and the employee produced other evidence suggesting the existence of psychological harassment. The presentation of this clandestinely recorded recording was therefore not essential to exercising the right to evidence. The appellate judges rightfully excluded it from the proceedings. The appeal was rejected.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The Court confirmed that EU law precludes a national law that prohibits the payment to a worker of an allowance in lieu of days of paid annual leave not taken when that worker voluntarily terminates his/her employment relationship.

Under French law, there is an indemnité compensatrice de congés payés (ICCP), which is payable when the employment contract is terminated and when the employee has not used all of his/her paid leave by that date (Bour Code. Article L3141-28). It corresponds to a sum paid by the employer to the employee at the end of the employment contract. How is the amount of compensation determined? ICCP must be calculated in two different ways: on the basis of one tenth of the employee's salary and on the basis of salary maintenance. The employee receives the higher of the two amounts.

Payment of the ICCP is subject to two conditions:

(a) Termination of the employment contract. This applies to all types of termination, whether initiated by the employee or the employer: resignation, end of probation period, redundancy, contractual termination or amicable redundancy, termination of a fixed-term contract (when it ends or prior to its initial date of termination), retirement, etc. (Labour Code Article L3141-28). The compensatory allowance is also paid to the employee's heirs in the event of death before the employee has taken his/her leave.

(b) Accrued entitlement not taken by the employee. It does not matter why the annual leave was not taken. Thus, the ICCP is due even if the employee refuses to take his/her leave before his/her departure (Cass. soc. 30-4-2003 No 01-40.853).

French law complies with the Court's ruling.

4 Other Relevant Information

4.1 Employee monitoring

AMAZON FRANCE LOGISTIQUE manages the AMAZON group's large warehouses in France, where it receives and stores items and then prepares parcels for delivery to customers. As part of its activities, each warehouse employee is given a scanner to

document the performance of certain tasks assigned to them in real time. Each scan carried out by the employees gave rise to the recording of data, which was stored and used to calculate a series of indicators providing information on the quality, productivity and periods of inactivity of each employee.

In November 2019, the French Data Protection authority (CNIL) launched investigations after several employees filed complaints. The CNIL was also informed of press articles which questioned the legality of the monitoring system set up by AMAZON FRANCE LOGISTIQUE. The examination of the case ended up with a detailed report issued on 04 April 2022 by the CNIL's rapporteur. Several violations were outlined, and the publication of the decision was recommended by the rapporteur to the CNIL.

The CNIL handed down its decision on 27 December 2023. It considered that the system for monitoring employee activity and performance was excessive, in particular for the following reasons (violation of Articles 5.1 c), 6, 12 and 13 GDPR):

- The company used indicators on employee activity and performance, collected by the scanners used to manage stocks and orders in its warehouses in real time. The CNIL ruled that it was illegal to set up a system measuring work interruptions with such accuracy, potentially requiring employees to justify every break or interruption.
- The CNIL held that the system for measuring the speed at which items were scanned was excessive.
- More generally, the CNIL considered it excessive to keep all data collected by the system, as well as the resulting statistical indicators for all employees and temporary workers for a period of 31 days.

Moreover, the CNIL ruled that the warehouse's video surveillance system violated the obligations of information and transparency, as well as the security obligations imposed by the GDPR:

- Employees and visitors were not properly informed about the video surveillance systems, since certain mandatory information (listed by Articles 12 and 13 GDPR) was not provided either on notice boards (or on other media), or through documents;
- Access to the video surveillance software was not sufficiently secure, since the access password was not sufficiently robust, and the access account was shared by several users (violation of Article 32 GDPR).

Germany

Summary

The State Labour Court Baden-Württemberg delivered an important ruling on the fulfilment of the entitlement to minimum wage payment.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Fulfilment of the entitlement to minimum wage payment

State Labour Court Baden-Württemberg of 11.01.2024 – 3 Sa 4/23

The Court ruled that an employer may not unilaterally switch holiday and Christmas bonuses from a previously annual one-off payment to monthly payments to ensure that the statutory minimum wage is met. In the past, the employee had received holiday and Christmas bonuses in June and December. At the end of 2021, however, the employer informed the employee that he would in future pay holiday and Christmas bonuses unconditionally and irrevocably on a monthly basis and offset them against the basic salary. From January onwards, the monthly statements included deductions for the "13th salary".

According to the Court, the agreed time for annual payment cannot be unilaterally changed by the employer to monthly payments to fulfil the minimum wage requirement. Due to the payment in two single instalments in summer and winter, which the employee had accepted for years, the parties had determined a payment period in accordance with Section 271 (1) of the Civil Code (*Bürgerliches Gesetzbuch*, *BGB*). In this respect, the company could not invoke Section 271 (2) of the BGB, according to which the debtor can also pay dues sooner "in case of doubt".

Section 271 reads as follows:

> *"(1) If a time for performance is neither determined nor can be inferred from the circumstances, the creditor may demand performance immediately and the debtor may effect performance immediately.*
>
> *(2) If a time is specified, it shall be assumed in case of doubt that the creditor cannot demand performance before that time, but the debtor can effect performance before that time."*

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January2024, Comune di Copertino

The Court held that Article 7 of Directive 2003/88/EC of the European Parliament must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the public employer's organisational needs, prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave accrued during both the last year of employment and previous years, which were not taken by the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not demonstrated that he or she had

not taken his or her leave during that employment relationship for reasons beyond his or her control.

According to Section 7 (4) of the German Federal Leave Act (*Bundesurlaubsgesetz*), leave must be compensated if it can no longer be granted in full or in part due to the termination of the employment relationship. This is to be understood as meaning that statutory leave compensation can only be demanded if the employment relationship has been terminated (Federal Labour Court of 16 October 2012 - 9 AZR 234/11). As a result of the CJEU's case law, entitlement to holiday pay in lieu arises regardless of whether the employee is fit for work or not at the time the employment relationship ends.

It seems that the Federal Labour Court has not yet dealt with the issue that gave rise to the CJEU's decision. However, the Court has ruled that an employee's entitlement to holiday pay as a purely monetary claim can, in principle, be subject to preclusive periods under collective agreements and that neither Article 7 of the Directive nor Article 31 (2) of the Charter of Fundamental Rights preclude this (Federal Labour Court of 24.05.2022 – 9 AZR 461/21, para 9). In an earlier decision, the Federal Labour Court specifically stated the following in this regard: "Article 7 of Directive 2003/88/EC and Article 31 (2) of the Charter of Fundamental Rights contain no provisions regarding the possibility of subjecting the right to paid annual leave and—as a right closely linked to that right—the right to financial compensation for annual leave not taken upon termination of the employment relationship (...) to a time-limited enforcement procedure under national law. In the absence of Union law governing the procedure for the enforcement of rights, the Court of Justice has consistently held that in accordance with the principle of procedural autonomy of the Member States, it is for the national legal system to organise the procedural arrangements which guarantee the protection of the rights of individuals under Union law (...). However, the rules adopted must not be less favourable than those governing similar situations in the national legal order (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by the Union legal order (principle of effectiveness) (....) (Federal Labour Court of 07 July 2020 – 9 AZR 323/19, para 27).

4 Other Relevant Information

Nothing to report.

Greece

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

Article 49 of the Greek Civil Service Code provides that annual leave can be carried over to the following year. However, the payment to a public sector worker (state employees: civil servants or employees under civil law contracts) of an allowance in lieu of the days of paid annual leave accrued during both the last year of employment and previous years, which were not taken by the date on which the employment relationship ends is not foreseen.

Therefore, the judgment has implications for Greece.

4 Other Relevant Information

The government announced the acceleration of the process of determining the minimum national wage for 2024 so the increase can be applied sooner and to provide support to employees in practice.

Hungary

Summary

(I) A decree of the Minister of Labour will contain the list of jobs and economic activities in which health and safety training can be replaced by an electronic information letter or website containing the general education material. The decree has not yet been published.

(II) According to the amended provision of the Labour Code, the employer shall schedule parental leave at the time requested by the employee, and the scheduled date of the annual leave time must be announced by the employee to the employer no later than 15 days before the first day of the leave.

1 National Legislation

1.1 New rules on training on health and safety at work

Article 16 of Act 70 of 2023 amended the rules on information and training provided by the employer for employees on health and safety at work. Formerly, Article 55 Act 93 of 1993 on Occupational Safety required employers to provide training on health and safety at work. According to the new subsection (2a), this training can be replaced by an electronic information letter or website containing the general education material published by the Minister of Labour. This approach may be used in jobs and economic activities defined by the Minister's decree.

The decree of the Minister of Labour will contain the list of jobs and economic activities in which health and safety training can be replaced by an electronic information letter or website containing the general education material. However, the decree has not yet been published. The government has published a draft decree for public discussion (ending on 30 January 2024), i.e. the decree will likely be issued on the same or following day. Article 1 of the draft contains the following list of jobs and economic activities for the above mentioned purpose:

a) administrative office jobs, where work is performed by computers,

b) teleworking, where work is performed by computers.

1.2 Amendment to the Labour Code

Article 118 (1)-(2) of the Labour Code regulates additional annual leave days for employees who are raising children:

(1) Employees shall be entitled to additional annual leave days as follows:

a) two working days for one child;

b) four working days for two children;

c) a total of seven working days for more than two children

under 16 years of age.

(2) The additional leave days referred to in subsection (1) shall be increased by two working days per child for children with disabilities.

Article 122 (4a) of the Labour Code was amended with the following new provision (which came into force on 1 January 2024):

"(4a) The employer shall schedule parental leave as defined in Article 118 (1)-(2) at the time requested by the employee, the employee must inform the employer of the scheduled date of annual leave no later than 15 days before the first day of that leave."

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The Hungarian Labour Code and other Acts in the public sector require the employer to provide compensation upon termination of the employment relationship for any reason, for any annual leave days not previously allocated, with the exception of paternity leave and parental leave.

Article 125 of the Labour Code, which must also be applied to public employees under Act 33 of 1992:

"Upon termination of the employment relationship, compensation shall be provided for any annual leave days not previously allocated, with the exception of paternity leave and parental leave."

The same rule must be applied under Article 129(11) of Act 125 of 2018 on government administration.

Therefore, the Hungarian regulations comply with the judgment, as compensation for annual leave days not allocated is granted irrespective of any other condition, such as the type of termination of employment, or the reason of not having allocated annual leave days.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

No new developments have been reported this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The CJEU case will not have any implications for Icelandic law.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

(I) The number of statutory sick leave days has been increased from three to five days.

(II) The transposition of the Adequate Minimum Wage Directive has been discussed by the social partners before a parliamentary committee.

1 National Legislation

1.1 Statutory sick leave

Statutory sick leave was first introduced by the Sick Leave Act 2022 which provides eligible employees—those with at least 13 weeks consecutive service—with three days of paid sick leave. The daily rate of pay is set at a maximum of EUR 110: see the Sick Leave Act 2022 (Prescribed Daily Rate of Payment) Regulations 2022 (S.I. No. 607 of 2022). The number of statutory sick leave days has now been increased, with effect from 01 January 2024, to five days: see the Sick Leave Act 2022 (Increase of Statutory Sick Leave Days) Order 2024 (S.I. No. 10 of 2024).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

Directive 2003/88 is transposed into Irish law by the Organisation of Working Time Act 1997 ("the 1997 Act"). The Labour Court has stressed on many occasions that an employee's right to paid annual leave must be regarded as a "particularly important principle of EU social law from which there can be no derogation": see *Cementation Skanska v Carroll* DWT0338 and *Mikoian v Motovilova* DWT0754.

Article 7(1) of the Directive is transposed by section 19 of the 1997 Act and, in accordance with Article 7(2), section 23(1)(a) provides that where an employee ceases to be employed and the whole or any portion of annual leave remains to be granted to the employee, the employee shall, "as compensation for the loss of that annual leave" be paid an amount equal to the pay that he or she would have received had he or she been granted that annual leave. The language employed in this subsection clearly indicates that it is irrelevant whether the employment relationship ended at the request of the employer or the employee.

How far back can an employee seek an allowance for annual leave not taken? In the CJEU case, the claimant, who resigned in October 2016 to take early retirement, sought payment of an allowance in lieu of 79 days of paid annual leave accrued between 2013 and 2016, 55 of which were payable in respect of years prior to 2016.

In Ireland, entitlement to paid compensation upon termination of the employment relationship only applies to annual leave not taken in "the relevant period", the term of which is defined in section 23(1)(b) of 1997. According to that somewhat convoluted definition, BU would have only been entitled to receive an allowance in respect of the

"current leave year"—2016—and would be considered to have "lost" the 55 days accrued from preceding leave years.

The Court of Justice, in this case, reiterates that Article 7 does not "in principle" preclude national legislation which lays down conditions for the exercise of the right to paid annual leave, including the loss of that right at the end of a leave year, provided, however, that the worker who has lost that right "has actually had the opportunity" to exercise the right: see paras. 35 and 48 and case law cited therein.

This CJEU's decision will require the Workplace Relations Commission and the Labour Court, were a case like this to arise in Ireland, to consider whether the claimant had been encouraged to take the accrued paid annual leave to which he or she was entitled and had been informed, accurately and in good time, that if it was not taken, it would be lost. If the claimant, however, had refrained from taking annual leave "deliberately and in full knowledge of the ensuing consequences, after having been given the opportunity to actually exercise his or her right thereto", then the loss of the right in the event of the termination of the employment relationship to an allowance in lieu of untaken paid annual leave is not precluded.

4 Other Relevant Information

4.1 Adequate minimum wages

Addressing the 24 January 2024 hearing of the Select Committee on Enterprise, Trade and Employment on the subject of the transposition of the Adequate Minimum Wages Directive (Directive 2022/2041/EU), the social partners disagreed as to whether legislation was necessary to implement, in particular, Article 4 of the Directive.

This Article requires the Member States to, *inter alia*, provide for "a framework of enabling conditions for collective bargaining" and to establish "an action plan to promote collective bargaining". The General Secretary of the Irish Congress of Trade Unions was adamant that legislation will be required to properly transpose the Directive whereas Ibec's Director of Employer Relations stated that there were little or no legislative changes required for the Directive's transposition.

Italy

Summary

(I) The Italian Budget Act for 2024 amends the rule on parental leave.

(II) The Italian Constitutional Court has declared a retroactive act affecting ongoing judgments as unconstitutional.

1 National Legislation

1.1 Budget Act

Act 30 December 2023 No. 213

On 30 December 2023, the Italian State budget for the financial year 2024 and the multi-year budget for the period 2024–2026 was published in the Italian Official Journal.

The Act provides for income support measures for certain categories of workers (working mothers; employees of the tourism and hotel industry; women victims of violence; call centre workers; fishermen; workers in companies confiscated by the Mafia) and extends the duration of the extraordinary *Cassa Integrazione* in certain cases (areas of complex industrial crisis; cessation of activity; corporate crisis; companies of national strategic interest).

Furthermore, the Act again changes the rules on parental leave (Article 1, co. 179). In particular, for the year 2024 only, periods of parental leave taken by workers with children under the age of 6 years of age, whose leave end after 31 December 2023, shall be compensated at 80 per cent of their remuneration for the first two months. From 2025 onwards, the allowance will be 80 per cent of their remuneration for the first month and 60 per cent for the second month. The following periods of parental leave, which are to be taken up by the child's 12th birthday, will continue to be paid at 30 per cent.

2 Court Rulings

2.1 Retroactivity of a legislation

Corte costituzionale 11 January 2024 n. 4

Retroactive acts that affect ongoing judgments are only legitimate in the event of essential needs of general interest.

The Court dealt with a retroactive law on the individual length of service remuneration in the public service. According to the Court, retroactive legislation must comply with the criteria of rationality and proportionality, and the review of constitutionality must be intensified when it concerns a retroactive rule that conditions the outcome of ongoing judgments, especially when the public administration is involved. Moreover, according to the European Court of Human Rights, only essential requirements of general interest, to be assessed "with the highest degree of circumspection", allow interference by the legislature on judgments in progress (ECHR, ruling 14 February 2012, *Arras* vs. *Italia*, para. 48).

The Italian Corte costituzionale recalled Art. 6 of the European Convention on Human Rights and some ECHR rulings (23 October 1997, *National & Provincial Building Society and Yorkshire Building Society* vs. *United Kingdom*, para. 112; 27 May 2004, OGIS-Institut Stanislas, *OGEC Saint-Pie X, Blanche de Castille and others* vs. *France*, para. 69; 20 February 2003, *ForrerNiedenthal* vs. *Germany*, para. 64).

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

CJEU C-218/22 rejects the Italian legislation that prohibits the civil servant from being granted an allowance in lieu of paid annual leave not taken by the date of the termination of the employment relationship in case of voluntary resignation.

This prohibition was established in Italian law in 2012 to reduce the expenditure by public service administrations, but according to the CJEU, national legislation cannot prohibit the payment of this allowance to a worker for reasons relating to control of public expenditure and organisational needs of the public employer. The Italian Corte costituzionale, in judgment No. 95/2016, had held that the censored act complied with the principles enshrined in the Italian Constitution, without infringing the principles of EU law or the rules of international law. Hence, this CJEU ruling has major implications for Italian legislation.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

The are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 204, Comune die Copertino

According to Article 149(5) of the Labour Law, in case of termination of the employment relationship, the employer has the obligation to pay compensation for the entire period of unused paid annual leave. It follows from this provision that there is no time lapse to the right to paid annual leave not taken. The said provision is equally applicable to civil service relationships as Article 2(4) of the Civil Service Law provides that the labour law is applicable with regard to working time and rest periods. Thus, Article 149(5) of the Labour Law is also applicable to civil service relationships.

It follows that the CJEU's decision in case C-218/22 has no implications for Latvian law.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

In case C-218/22, the CJEU (First Chamber) ruled as follows:

Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 04 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave acquired, during both the last year of employment and previous years, which were not taken by the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not demonstrated that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control.

This judgment was prompted by a provision issued by an Italian municipality (CJEU case C-218/22 para. 8). The provision prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave accrued, which were not taken by the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not demonstrated that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control. The purposes of the regulation are the control of public expenditure and the organisational needs of the public employer.

The following statements of the CJEU are particularly important for understanding the present case: The right to paid annual leave includes the right to an allowance in lieu of annual leave not taken upon termination of the employment relationship (CJEU case C-218/22 para. 29). There is no condition for entitlement to an allowance in lieu other than that relating to the circumstance, first, that the employment relationship has ended and, secondly, that the worker has not taken all the annual leave to which he/she was entitled on the date that that relationship ended (CJEU case C-218/22 para. 31). Therefore, the reason for which the employment relationship has ended is not relevant (CJEU case C-218/22 para. 32).

However, Directive 2003/88/EC does not, in principle, preclude national legislation which lays down conditions for the exercise of the right to paid annual leave, including even the loss of that right at the end of a leave year or of a carry-over period; that

Directive cannot, as a matter of principle, prohibit a national provision which provides that, at the end of such a period, the days of paid annual leave not taken may no longer be replaced by an allowance in lieu, including where the employment relationship is subsequently terminated, '*provided that the worker has had the opportunity to exercise the right conferred on him by that directive*' (CJEU case C-218/22 para. 39, emphasis added by the author). This presupposes that the employer must ensure, specifically and transparently, that the worker was actually given the opportunity to take the paid annual leave to which he or she is entitled, by encouraging him or her, formally if need be, to do so, while informing him or her, accurately and in good time so as to ensure that that leave is still capable of procuring for the person concerned the rest and relaxation to which it is supposed to contribute, that, if he or she does not take it, it will be lost at the end of the reference period or authorised carry-over period or can no longer be replaced by an allowance in lieu (CJEU case C-218/22 para. 49).

It follows that, should the employer not be able to show that it has exercised all due diligence to enable the worker to actually take the paid annual leave to which he or she is entitled, which is for the referring court to verify, it must be held that the loss of the right to such leave at the end of the reference period or the authorised carry-over period, and, in the event of the termination of the employment relationship, the corresponding absence of a payment of an allowance in lieu of annual leave not taken constitutes a failure to have regard, respectively, to Article 7(1) and 7(2) of Directive 2003/88/EC and Article 31(2) of the Charter (CJEU case C-218/22 para. 50).

It is not apparent that Liechtenstein law contains a provision that is comparable to the aforementioned provision in Italian law.

According to Section 1173a Article 33(2) of the Civil Code (Allgemeines bürgerliches Gesetzbuch, LR 210), the annual leave entitlement may not be replaced by monetary payments or other benefits during the employment relationship. Conversely, the undisputed principle applies—both in Liechtenstein and in Switzerland—that annual leave must be paid if it could not be taken in kind. Liechtenstein has largely adopted the labour law of Switzerland. As Liechtenstein is a small country, court decisions are relatively rare. The Liechtenstein courts therefore regularly follow Swiss case law and doctrine. In BGE 131 III 451 No. 2.2, the Swiss Federal Supreme Court expressly ruled that a claim for compensation for unused annual leave arises if it can no longer be granted in kind. This is always the case after the employment relationship has ended.

Nothing else follows from the State Personnel Act (Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz, StPG, LR 174.11). Article 17(3) of the State Personnel Ordinance (Verordnung über das Dienstverhältnis des Staatspersonals, Staatspersonalverordnung, StPV, LR 174.111) stipulates the following: If an employee leaves the service, paid annual leave not taken for the year of departure is only compensated financially if the leave could not be taken for operational reasons. This provision is not a priori contrary to the above-mentioned principles in CJEU case C-218/22, but the public employer must ensure that it has exercised all due diligence to enable the worker to actually take the paid annual leave to which he or she is entitled (see CJEU case C-218/22 para. 50 and the explanations above).

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

There were no labour law development this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The case of the CJEU does not have any implications for Lithuania, as there are no provisions in place which would allow for the deterioration of the general rule concerning the compensation of annual leave not taken in case of termination of the contract of employment. Regardless of the grounds for the termination of the employment relationship, public and private sector employees are entitled to financial compensation for unused annual leave (Art. 127 (6) of the Labour Code) without any restrictions.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

There are no new developments related to labour laws, decrees or bills.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Commune di Copertino

The decision should not have any implications for Luxembourg.

Neither in the case of private law contracts governed by the Labour Code, nor in civil service law is there any provision prohibiting the payment of an allowance in lieu of the days of paid annual leave accrued, where the employee voluntary terminates the relationship.

4 Other Relevant Information

Nothing to report.

Malta

Summary

There were no new developments this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The present case is extremely interesting because it addresses a key point in matters relating to annual leave. Annual leave in Malta is not automatically carried over to the following year. Regulation 8(3) of the Organisation of Working Time Regulations states the following:

> *"Notwithstanding the provisions of sub-regulation (1), a proportion of the leave entitlement not exceeding 50% of the annual leave entitlement, may, by mutual agreement between the employer and employee, be carried over once to the next calendar year. Such vacation leave carried forward from the previous year will be utilised first, and may not be carried forward again."*

This sub-regulation does not seem to be fully aligned with the ruling of the CJEU in question. There is no provision in Maltese law that allows more than 50 per cent of annual leave to be carried over to the next year. The implication of this Article is that if the employment is terminated the following year (i.e. in the year to which the vacation leave was carried forward), the employee must be compensated for the accrued leave. The question that arises is whether the fact that Maltese law limits the actual amount of leave that can be carried over would contravene EU law. The corollary and implications of the judgment are indeed that this would be the case.

The CJEU's ruling is quite logical. If an employee is allowed to carry over annual leave to the following year, then he/she should be compensated for it if his/her employment relationship is terminated. Indeed, any interpretation to the contrary would defy the entire logic of the Court's decision.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

(I) Consultation on the Decree on Posting of Workers by Intermediaries due to the introduction of an authorisation requirement.

(II) Consultations on the Whisteblower Act for the Judiciary have been initiated.

(III) The Working Hours Decree implements Regulation (EU) 2020/1054 on Working Time Rules for Drivers.

(IV) The statutory minimum wage will increase on 1 July 2024.

(V) A request for advice on AI has been submitted to the Social Economic Council.

(VI) The Supreme Court has issued an update in the Helpling case.

(VII) A Court of Appeal has interpreted Article 10 ECHR.

(VIII) A District Court has interpreted Article 13 Directive (EU) 2019/1152 concerning training costs, while another District Court has concluded that no employment contract has been concluded between two parties, and yet another has published an interpretation on seniority and Directive 2001/23/EC.

1 National Legislation

1.1 Amendment to the Decree on Posting of Workers

The consultation phase for amending the rules on the posting of workers by intermediaries is open from 24 January to 24 February 2024. The amendment concerns the procedure of submitting an application for authorisation, the provision and receipt of data from, among others, the labour inspectorate and tax administration, what type of financial security must be provided and the expiration of this obligation, the data to be included in the public register, the designation of inspection bodies, the requirements of the framework of standards in addition to what is regulated by law, may consist of exclusively.

1.2 Whistleblower Act for the Judiciary (*Consultatie Wet klokkenluidersregeling rechtspraak*)

A consultation on the Whistleblower Act for the Judiciary has been initiated. The law offers protection to employees who report suspected wrongdoing to the employer, so-called whistleblowers. The bill provides a regulation specific to the judiciary for reporting suspicions of wrongdoing. One reason why a specific law is being proposed is that investigations by an external organisation, e.g. by the House of Whistleblowers, may be at odds with the Constitution. To safeguard judicial independence, the bill therefore provides for a whistleblower scheme that takes the constitutionally guaranteed judicial independence into account. The consultation is open until 21 February 2024.

1.3 Working Hours Decree on Transport

The decree of 20 December 2023 (amending the Working Hours Decree on Transport) implements Regulation (EU) 2020/1054 (Stb. 2023, 519) on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods, amending a few provisions in the Working Hours Decree.

1.4 Letter of the Minister on the compliance survey of the Works Councils Act

With a parliamentary letter, the Minister of Social Affairs and Employment has informed Parliament of the results of the compliance survey of the Works Councils Act (*Kamerstukken II* 2023/24, 29818, No. 47). This periodic survey was last conducted in 2017 and establishes the percentage of companies that are required to have an established works council and how many have such a council and how employee participation in such a council functions. At the same time, a periodic survey on the prevalence of employee participation in collective agreements was also conducted. Over 100 collective agreements were reviewed for provisions granting the works council powers to flesh out general collective agreements that complement the Works Council Act and grant additional powers to the works council.

1.5 Letter of the Ministers and State Secretaries on addressing single earner problems

In their letter to the Senate, the Ministers of Social Affairs and Employment and Poverty Policy, Participation and Pensions and State Secretaries of Finance (taxation and tax administration) and Finance - Surcharges and Customs, provide insights into the progress for a solution for the group of single earner households that have a lower disposable income than a comparable household with members who receive welfare (*Kamerstukken I* 2023/24, 36410 XV, I). As a legislative amendment of the Participation Act is necessary, a temporary bridging scheme is being developed until the final solution based on taxation has been elaborated.

1.6 Statutory minimum wage increases as of 01 July 2024

The statutory minimum wage will increase by 1.2 per cent as of 01 July 2024, which is separate from the indexation that will take place as of the same date.

1.7 Report 'Moderate Growth' by the State Committee on Demographic Developments 2050

On 16 January 2024, the State Committee on Demographic Developments 2050 published its report 'Moderate Growth'. The Committee has mapped scenarios for The Netherlands as well as ways in which the government can influence these. The State Commission's report consists of three parts: (1) the meaning and content of demographic scenarios in general and those for The Netherlands, in particular, highlighting the main demographic trends for the next 25 years, namely ageing and migration; (2) the possible consequences of these trends for three domains: space (including housing), the economy (including the labour market) and public services (social security, education, care); and (3) the effects of these trends on social cohesion in the country. The report concludes with proposed measures that the government and Parliament can take, from moderate population growth towards 2050 to maintaining broad prosperity in the long term.

1.8 Request for advice from the Social Economic Council on AI

On 18 January 2024, the Dutch government asked the Social Economic Council to advise the government on how to deal with new developments in the context of AI, both through effective government policy and through social partner actions. Three overarching questions were asked:

1. Productivity: what can stakeholders —employers, employees, social partners, government— do to promote productivity growth through the application of AI? What are the potential opportunities in which sectors? What obstacles exist?
2. Quality of work: which measures can be implemented to ensure that the deployment of generative AI does not compromise (and possibly even enhance) the quality of work?
3. Income and employment: what can or should stakeholders do to address the potentially disruptive effects of AI deployment on the labour market and the related income inequality?

2 Court Rulings

2.1 Employment status of cleaners

Supreme Court, 12 January 2024, ECLI:NL:HR:2024:23

This case dealt with the employment status of cleaners who work for private households through the platform Helpling: the questions were whether they are employees of private households or of Helpling, which entity acts as a temporary work agency and who is subsequently required to comply with the obligations laid down in Directive 2008/104/EC as implemented in the Posting of Workers by Intermediaries Act (Wet allocatie arbeidskrachten door intermediairs, Waadi)?

On 10 January 2023, Helpling declared bankruptcy. At issue in the present Supreme Court's ruling was the impact of Helpling's declaration of bankruptcy in cassation. The Supreme Court ruled that the case could proceed with regard to the question whether an employment contract had been concluded with Helpling, and whether Helpling acted in conflict with Article 9 Waadi (prohibited consideration of employee). A future procedure will address the qualification of the employment status of cleaners.

2.2 Termination of employment

Court of Appeal Arnhem-Leeuwarden, ECLI:NL:GHARL:2024:152, 08 January 2024 (published 10 January 2024)

This case concerned the interpretation of Article 10 ECHR. It revolved around a university employee who had authored an essay marked by personal criticism and a reproachful tone, which could potentially impact faculty recruitment and harm collegial relations.

The Court recognised the role of the essay in the events leading up to the termination of the employment contract in line with ECtHR's jurisprudence. However, the Court emphasised that the chain of events had not been initiated with the essay. There was a timespan of two and a half years between the essay's publication and the notice of dismissal. During this period, additional events occurred that had had an impact on the employment relationship, leading to the notice of dismissal. The Court of Appeal concluded that although the essay falls within Article 10 ECHR, there is no direct causal link between the employee's dismissal and the essay. The Court considered the essay to be one aspect in the chain but not an essential factor, leading to the rejection of the employee's claim.

2.3 Employers' obligation to provide necessary training

District Court Midden-Nederland, *ECLI:NL:RBMNE:2023:6981,* 13 December 2023 (published 9 January 2024)

This case concerned the interpretation of Article 7:611a Civil Code, which implements Article 13 Directive (EU) 2019/1152, the legal provision of employers' obligation to provide necessary training to employees free of charge.

The employee, a certified occupational health service professional participating in training to become a company doctor, challenged the study cost clause in the employment contract, alleging violations of good employment practice related to transparency and the distinction between different categories of employees.

Since none of the parties argued for nullity under Article 7:611a(4) Civil Code, the Court refrained from addressing whether the training to become a registered company doctor falls under the provision's scope. Nor did the Court rule on whether there is an exception in the Preamble of the Directive (consideration 37) to the rule on education in the Directive itself (Article 13). Opinions among legal professionals differ on the answer to this question. Therefore, in the present case, the District Court does not address the question whether the training for a registered company doctor falls under Article 7:611a(2) Civil Code, i.e. whether the training was a 'need to have' for the agreed upon tasks or merely a 'nice to have'. The latter is arguable because the employee could perform the agreed upon tasks without being registered. His activities were approved by company doctors who were registered.

Thus, the Court ruled that the clause is valid except for the part on the lack of clarity concerning supervision costs.

2.4 Determination of employment status

District Court Noord-Nederland, ECLI:NL:RBNNE:2024:107, 17 January 2024 (published 19 January 2024)

This case revolved around the qualification of an employment relationship. The central dispute between the parties was whether an employment contract or, alternatively, a training agreement had existed. According to Dutch law, an employment contract is established when the contract meets three key criteria: the provision of work, remuneration and a relationship of authority (Article 7:610 Civil Code).

The District Court ruled that the trainee had received remuneration, and that the working relationship was characterised by a relationship of authority.

The pivotal question that remained was whether the trainee had primarily performed 'work' in the interest of the training received or in the interest of the performance of tasks. According to the District Court, the parties had entered into a training agreement that was primarily beneficial for the trainee's education. The Court asserted that the mere fact that some of the tasks performed by the trainee may have also benefitted the 'employer' did not negate the predominant purpose of the work being performed for the trainee's educational advancement.

Consequently, according to Article 7:610 Civil Code, no 'work' in the legal sense had been performed, leading to the absence of an employment contract between the parties.

2.5 Transfer of undertakings

District Court Amsterdam, *ECLI:NL:RBAMS:2024:81,* 11 January 2024

This case concerned the question which rights, specifically those related to seniority, transfer following a transfer of undertaking, as regulated by Article 3(1) Directive 2001/23/EC and Article 7:663 Civil Code. The case concerned the transfer of undertaking between the airline companies Martinair and KLM. It can be considered a follow-up of the judgment of the Supreme Court (reported in FR 2023-1). In the latter judgment, which also concerned the Martinair-KLM transfer but which was initiated by different employees, the Supreme Court held, *inter alia*, that the Court of Appeal had

failed to examine whether the order of dismissal is a right of a financial nature for which seniority is a co-determining factor and whether, as a result of the transfer, the employees would end up in a less favourable position than at Martinair if their seniority accrued at Martinair was not taken into account in the event of redundancy at KLM. In the present case, the District Court found that dismissal protection represents a right of a financial nature. After all, the longer someone is employed, the less likely it is that this person will be eligible for dismissal, with all the consequences including a longer continued employment with associated salary continuation. This means that seniority is preserved in the light of the order of dismissal, because the order of dismissal is a transferable right under the Directive.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

Dutch law is in line with the CJEU's judgment. On the basis of Article 7:641 Civil Code, an employee with an entitlement to paid annual leave at the end of the employment contract is entitled to a cash amount of the salary for the period corresponding to the entitlement. This is irrespective of the manner in which or on whose initiative the employment contract has ended. The limitations flowing from the *Max Planck* judgment, which are reiterated in the CJEU in the *Comune di Copertino* judgment, can be read into Article 7:640a Civil Code (the entitlement to the minimum period of paid annual leave of four weeks lapses six months after the last day of the calendar year in which the entitlement was acquired, unless the employee was not reasonably able to take holidays until that time).

What is more important for The Netherlands is that the CJEU has continued a recently started trend in cases on paid annual leave: with reference to Article 52(1) Charter of Fundamental Rights of the EU, the right to paid annual leave may only be limited (in certain circumstances) if it is provided for by law. For example, employment contracts or staff handbooks in The Netherlands often stipulate that an employee shall take (if reasonably possible) his/her paid annual leave in the period before the end of the employment contract. It is doubtful whether such a provision is still possible, since Dutch law does not explicitly provide for this possibility.

4 Other Relevant Information

Nothing to report.

Norway

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The right to paid annual leave is regulated in the Holiday Act (LOV-1988-04-29-21) and applies to employees both in the public and private sector. The right to annual leave ('feriefritid') is regulated as a right that is separate from the right to holiday pay ('feriepenger'), cf. Chapter II and Chapter III, respectively. Simply put, holiday pay is accrued by wages from the employer in the qualifying year and paid when annual leave is taken in the following year, the holiday year. This has led ESA to question whether the Norwegian implementation of the right to paid annual leave is in line with Directive 2003/88/EC Article 7. Against this background, the Norwegian government has announced that the Holiday Act will be reformed, see also March 2023 Flash Report and October 2023 Flash Report.

The Act stipulates that days of leave not taken by the end of the holiday year shall be transferred to the following holiday year, cf. Section 7 (3) subsection 2. The preparatory works state that there are no limitations to the right to transfer days of leave not taken, cf. Ot.prp. No. 65 (2007-2008) Chapter 2.5.2.

Employees are entitled to holiday pay (accrued during the qualifying year) when they take annual leave in the applicable holiday year. However, many receive holiday pay instead of wages in a specific 'holiday month', regardless of when the leave is actually taken.

The Holiday Act does not allow compensation in lieu of days of leave not taken. When the employment relationship is terminated, all accrued holiday pay must be paid on his/her last day, cf. Section 11 (3). If the employer has deducted wages for a 'holiday month', and the employee worked instead of taking full leave in that month, the employee will have a salary claim when the employment is terminated.

Against this background, the ruling does not seem to have any direct implications for Norwegian law.

4 Other Relevant Information

Nothing to report.

Poland

Summary

(I) The new rates of minimum national wage will apply from 01 January 2024.

(II) The new draft legislation on whistleblowing and factors harmful to health in the working environment has been announced.

1 National Legislation

1.1 National minimum wage

Based on the Decree of the Council of Ministers of 14 September 2023 on the amount of minimum wage and of minimum hourly rate in 2024 (Dz. U. 2023, 1893), two increases in the minimum monthly wage and minimum hourly rate will apply in 2024:

- from 01 January 2024, the minimum monthly wage will be PLN 4,242 gross (EUR 970), and the minimum hourly rate will be PLN 27.70 gross (EUR 6.31),
- from 01 July 2024, the minimum monthly wage will be set at PLN 4,300 gross (EUR 978) and the minimum hourly rate at PLN 28.10 gross (EUR 6.40).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

Polish law does not provide for any regulations that limit the right to a cash equivalent for specific groups of employees and therefore does not require any fundamental changes because of the issued ruling. Pursuant to Article 171 of the Labour Code, every employee who has not used any part of accrued leave prior to the termination or expiration of the employment is entitled to a cash equivalent in lieu. The only exception is a situation in which the parties to an employment contract decide that the employee is to use accumulated leave during the term of a renewed contract with the same employer immediately after the termination or expiration of the previous contract.

4 Other Relevant Information

4.1 Draft law on whistleblowing

On 11 January, another bill intended to implement Directive 2019/1937 of the European Parliament and of the Council (EU) of 23 October 2019 on the protection of persons who report breaches of Union law (Whistleblowing Directive) was published.

The main assumptions of the new bill are:

- the tasks of receiving and processing external applications will be assigned to the Ombudsman;
- implementation of internal whistleblowing procedures will be mandatory for all legal entities that hire or use the services of at least 50 persons (this threshold

will not apply to entities rendering activities, among others, in providing financial services, products and markets, and anti-money laundering and countering the financing of terrorism);

- respective entities will adopt internal whistleblowing procedures after consultations with company trade unions, and where no trade unions operate at a given legal entity, with representatives of persons working for the given entity, selected in accordance with the procedure adopted at that entity;
- the deadline for establishing an internal notification procedure at the respective entities is extended to one month from the entry into force of the law.

According to information published in the Council of Ministers' legislative and programmatic work list, the bill is expected to be adopted as a matter of urgency by the end of the first quarter of 2024, while the law is expected to take effect one month after its promulgation.

4.2 Draft law on maximum permissible concentrations and intensities of factors harmful to health in the working environment

On 22 January 2024, a draft regulation of the Minister of Family, Labour and Social Policy amending the regulation on maximum permissible concentrations and intensities of factors harmful to health in the working environment was published on the website of the Government Legislation Centre.

The amendment provides for:

- an introduction of new values of maximum permissible concentrations for certain harmful factors;
- extension with new chemicals of the list of values of maximum permissible concentrations of chemical and dust factors harmful to health in the working environment.

According to the draft, the new regulations will enter into force on 05 April 2024.

The amendment results from the need to transpose into national law the provisions of Directive (EU) 2022/431 of the European Parliament and of the Council of 09 March 2022 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

Portugal

Summary

(I) Some measures aimed at valorising civil servants and their respective careers have been approved.

(II) An analysis of two recent national court rulings on collective dismissals and transfers of a business unit is presented.

1 National Legislation

1.1 Measures aimed at valorising civil servants

Decree Law No. 13/2024, of 10 January has approved some measures aimed at valorising civil servants and their respective careers.

This Decree Law amends the structure of the remuneration of certain careers in the public administration and approves changes to the legal framework applicable to civil servants, approved by Law No. 35/2014, of 20 June ("*Lei Geral do Trabalho em Funções Públicas*"), including on the payment of overtime work to align the rules applicable to civil servants with those applicable in the private sector, recently amended by Law No. 13/2023, of 03 April.

This Decree Law took effect on 01 January 2024.

2 Court Rulings

2.1 Collective dismissal

Supreme Court of Justice, Process No. 19328/16.1T8PRT.L1.S1, 13 December 2023

In this ruling, the Supreme Court of Justice analysed the validity of a collective dismissal of a Portuguese banking institution (Novo Banco).

The Supreme Court of Justice explained that a collective redundancy consists of a management decision and the Court must not disregard the company's management criteria insofar as they are reasonable. However, for assessing the validity of the grounds invoked for the collective dismissal, the Court must proceed in the light of the proven facts and with respect for the company's management criteria, not only to check the veracity of the grounds invoked, but also to verify the existence of a link between those grounds and the redundancy, so that those grounds are reasonably capable of justifying the decision to reduce staff through collective dismissal.

In the present case, the company invoked the need to comply with the objectives set out in the Recovery Plan until the end of 2016 as a relevant ground for the collective redundancy. However, as the company had achieved that objective by the time the dismissal was made, i.e. the reduction of the number of employees by 1 000 and the reduction of operating costs by EUR 150 million, the Court concluded that the company had not proven the existence of a causal link between the market and structural grounds invoked and the collective dismissal and, consequently, such dismissal was considered unlawful.

2.2 Transfer of a business unit

Appeal Court of Lisbon, Process No. 15309/18.9T8LSB.L2-4, 10 January 2024

In the present case, an employee who was transferred to another company in July 2017, requested the Court to declare the transfer of his employment contract as unlawful and that he would remain employed by the original company and be reintegrated in his job.

The Court determined that part of the company that constituted an economic unit had not been transferred, but rather that a task had been transferred, accompanied by the selection of a workforce, considering that, although tangible assets were transferred, employees who performed the same functions as the plaintiff on the date of the transfer remained with the original company and the plaintiff's managers were not transferred to the other company, remaining at the service of the original company. For these reasons, the Court concluded that the legal requirements for the transfer of the employment contract had not been met.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

This ruling concerned the interpretation of Article 7 of the Directive 2003/88/EC, related to certain aspects of the organisation of working time (hereinafter, "WTD") and Article 31 (2) of the Charter of the Fundamental Rights of the European Union (hereinafter, "Charter").

In the present case, the worker was employed by the Municipality of Copertino, in Italy, claiming an allowance in lieu of 79 days of paid annual leave accrued during the period between 2013 and 2016, after terminating his employment contract by voluntary resignation as of 01 October 2016.

The CJEU recalled that according to settled case law, the worker's right to paid annual leave must be considered as being a particularly important principle of EU social law from which there may be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by the WTD. Thus, Article 7(1) of the WTD, which stipulates that Member States should take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice, reflects and gives effect to the fundamental right to a period of paid annual leave enshrined in Article 31(2) of the Charter.

The right to paid annual leave, understood as a fundamental principle of EU social law, includes the right to an allowance in lieu of annual leave not taken upon termination of the employment relationship. Article 7(2) of the WTD provides that in the event of termination of the employment relationship, the worker is entitled to an allowance in lieu of the days of annual leave not taken and such provision lays down no condition for entitlement to an allowance in lieu other than that the employment relationship has ended and the worker has not taken all the annual leave to which he/she was entitled on the date that relationship ended.

Considering the above, the CJEU ruled that Article 7 of the WTD and Article 31(2) of the Charter *"must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave acquired, during both the last year of employment and previous years, which were not taken at the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not shown that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control".*

Portuguese labour law is aligned with the interpretation of Article 7 of the WTD reflected in this recent ruling. Indeed, Article 245 (1) of the Portuguese Labour Code stipulates that in any case of termination of the employment contract, the worker is entitled to receive the remuneration corresponding to the annual leave accrued but not used, and the respective allowance.

4 Other Relevant Information

4.1 Dissolution of Parliament and early legislative elections

By Decree No. 12-A/2024, of 15 January, the President of the Republic has decreed the dissolution of Parliament and set early legislative elections for 10 March 2024.

Romania

Summary

(I) Employees can continue their employment contracts until the age of 70 years.

(II) Work permits can also be issued in electronic format.

(III) Trade union federations can bring legal actions on behalf of union members.

1 National Legislation

1.1 Termination of employment upon reaching retirement age and exceptions

The employment contract automatically terminates when the employee reaches the statutory retirement age. By way of derogation from this rule, employees may continue to work under the same employment contract based on an annual agreement of the employer.

Law No. 360/2023 on the public pension system amends the conditions for remaining active under the same employment contract for individuals who have reached statutory retirement age based on a provision that entered into force on 1 January 2024. To date, Article 56 (4) of the Labour Code provided the possibility of continuing one's activity after reaching statutory retirement age for an additional three years; for example, in the case of men, this meant until the age of 68 years.

The new rule allows employees to continue the employment contract until they reach the age of 70 years, regardless whether they are women or men and regardless of the statutory retirement age. Continuing one's activity depends on the employer's agreement. Employees who make such a request may opt for either a salary or a pension – these cannot be cumulated.

After retirement, the individual can enter into a new employment contract which combines the individual's pension with his/her salary.

1.2 Employment of foreigners

Government Ordinance No. 6/2024 amended Government Ordinance No. 25/2014 on the employment and posting of foreigners on the territory of Romania. Currently, the work permit [*aviz de angajare*] or posting permit of third-country nationals on the territory of Romania can also be issued electronically, signed with the qualified electronic signature of the territorial branch of the General Inspectorate for Immigration.

For the year 2024, a quota of 100,000 newly admitted foreign workers has been established for the labour market in Romania, the same amount as in 2023.

2 Court Rulings

2.1 Labour jurisdiction - Right of the federation to initiate legal action on behalf of union members

Article 28 (1) of the Law on Social Dialogue No. 62/2011 granted trade unions the right to initiate legal actions on behalf of their members. Although the Law on Social Dialogue No. 62/2011, applicable at the time the action was initiated, has since been repealed by Law No. 367/2022, the provisions of Article 28 (1) have been seamlessly incorporated into the new law without any changes.

The issue at hand arises from the fact that some employees had not authorised the union of which they were members to initiate legal proceedings on their behalf. Instead, they authorised the federation that included this union to initiate proceedings. Technically, employees do not hold the status of 'members' of the federation; this status is held by the affiliated unions, not the employees who are members of these unions. The problem related to the application of territorial jurisdiction rules: should such a dispute be adjudicated by the territorially competent court at the federation's headquarters or by the competent court at the basic organisation's headquarters?

This situation triggered a negative conflict of jurisdiction, with the court at the basic organisation's headquarters and the court at the federation's headquarters mutually declining to have competence to settle the dispute.

In resolving this jurisdictional conflict, the High Court of Cassation and Justice, Civil Section II, established through Decision No. 1442/2023 that the competence to settle the dispute lies with the court at the federation's headquarters. Federations, confederations or union associations have the same rights as the unions that constitute them, considering the purpose for which all of them have been formed, namely the defence of the rights and interests of employees, as stated by the High Court of Cassation and Justice in its reasoning.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

According to Article 146 (3) of the Labour Code, 'the financial compensation for unused annual leave is only permissible in case of termination of the employment contract'. Regardless of the reason for the termination of the employment relationship, both in the private and public sectors, employees have the right to compensation for unused annual leave. The only aspect related to working time where control of public expenditure has been invoked concerns the compensation for overtime work, which in the public sector can only be provided in the form of equivalent time off, not by a compensatory allowance (Emergency Government Ordinance No. 115/2023).

But compensation for unused annual leave at the end of the employment contract has never been questioned, regardless of the reason for its termination.

Financial compensation for unused leave is limited by the courts to the last 3 years before the termination of the employment relationship, not because there is a legal provision on this particular limit, but because this is the general prescription period for monetary claims (for example, Decision of the Alba Iulia Court of Appeals No. 72 of January 30, 2019).

Tangentially, it is worth mentioning that an issue generating a non-uniform practice is the possibility of financial compensation for unused leave in case of certain public sector workers such as teachers when they are transferred to another institution within the same system. The divergent solutions by the courts revolve around the possibility of the new institution to which the employee has been transferred, assuming the obligation to grant the unused leave in kind from the transferring unit. Some courts have argued that the right to financial compensation for annual leave arises from the transfer because the employment contract terminates (Cluj Court of Appeals, Civil Decision No. 554 of 20 March 2023). Other courts have ruled that since the teacher had remained within the public education system, his/her employment relationship as an employee in the educational system did not cease through the transfer. Therefore, the transferred teacher was entitled to the outstanding leave in kind from the unit from which the transfer occurred (Ploiești Court of Appeals, Civil Decision No. 1965 of 27 September 2021; Cluj Court of Appeals, Civil Decision No. 1164 of 21 June 2023).

In conclusion, although the issue of how to grant unused annual leave in the public sector has sparked some controversy, Romanian jurisprudence is in line with the decision of the Court of Justice of the European Union in case C-218/22.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

Supreme Court's rulings on fixed-term employment relationship, as well as wage compensation have been issued.

1 National Legislation

Nothing to report.

2 Court Rulings

Collection of opinions of the Supreme Court and decisions of the courts of the Slovak Republic No. 6/2023, decisions in civil law matters.

2.1 Fixed-term employment relationship and collective agreement

Judgment of the Supreme Court of the Slovak Republic, file No. 9Cdo/273/2020, 30 November 2022

The provision in Article 48 paragraph 4 letter d) of the Labour Code requires that specific types of work for which it is possible to extend or re-negotiate a fixed-term employment relationship must be agreed in the collective agreement.

In an employment contract in which the employer only cited the fact that the employee performs work as defined in the collective agreement to be the reason for re-extending the employment relationship, is not a material reason for the temporary nature of such an agreement for a fixed-term employment relationship.

Article 48 paragraph 4 letter d) of the Labour Code – Act No. 311/2001 Collection of Laws (Coll.), as amended: Fixed-term employment relationship:

> *"(4) A further extension or renewal of the fixed-term employment relationship to two years or over two years may only be agreed for the following reasons of*
>
> *d) the performance of work agreed in a collective agreement."*

2.2 Wage compensation

Judgment of the Supreme Court of the Slovak Republic, file No. 9Cdo/127/2022, 22 June 2023

The fact that the employee had concluded a different employment relationship (or other labour law relationship) while he claimed wage compensation according to Article 142 paragraph 3 of the Labour Code, does not in itself cause an obstacle on the part of the employee, for which the employee cannot be granted wage compensation for an obstacle on the part of the employer according to Article 142 paragraph 3 of the Labour Code. The decisive factor is whether the employer invited the employee to return to work and whether the employee was ready, willing and able to perform the work according to the employment contract.

Article 142 paragraphs 1-3 of the Labour Code – Act No. 311/2001 Coll., as amended: Obstacles on the part of the employer:

> *"(1) If an employee is unable to perform work due to a temporary lack of such caused by a breakdown in machinery, in the supply of primary materials or force majeure, faulty working documentation, or other similar operational causes (stoppage), and if the employee was not transferred to other work upon agreement, he/she shall be entitled to wage compensation in the amount of his/her average earnings.*
>
> *(2) If an employee is unable to perform work due to adverse effects of weather, the employer shall provide him/her with wage compensation in the amount of at least 50 % of his/her average earnings.*
>
> *(3) If an employee is unable to perform work due to obstacles on the part of the employer other than those stipulated in paragraphs 1 and 2, the employer shall provide him/her with wage compensation in the amount of his/her average earnings."*

2.3 Labour discipline, warning and unlawful threat

Judgment of the Supreme Court of the Slovak Republic, file No. 4Cdo/161/2021, 28 September 2022

By notifying the employee that his behaviour demonstrably violated labour discipline, the employer exercised its authority enshrined in the Labour Code, the exercise of which cannot be considered an unlawful threat forcing the employee to conclude an agreement on the termination of the employment relationship and to express a will in it that he did not actually have.

Article 1 paragraphs 1 and 4 of the Labour Code – Act No. 311/2001 Coll., as amended: Scope of the Labour Code:

> *"(1) This Act regulates individual labour law relations in connection with the performance of dependent work by natural persons for legal persons or natural persons and collective labour law relations and some legal relationships related to them.*
>
> *(4) Unless stipulated otherwise by Part One of this Act, the general provisions of the Civil Code shall apply to legal relations pursuant to paragraph 1."*

Article 60 paragraph 1 of the Labour Code – Act No. 311/2001 Coll., as amended: Agreement on termination of the employment relationship:

> *"(1) If the employer and employee agree on the termination of the employment relationship, the employment relationship ends on the agreed day."*

Article 37 paragraph 1 of the Civil Code – Act No.40/1964 Coll., as amended:

> *"(1) A legal act must be concluded freely and seriously, definitely and intelligibly; otherwise it is invalid."*

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The Directive has been transposed in the relevant acts of the Slovak Republic. The main legal source is the Labour Code (Act No. 311/2001 Collection of Laws – "Coll.") as amended. The provisions of the Labour Code are binding for all employers in the private (business) sector as well as in the public sector. The Labour Code applies to the labour

relations of employees who perform work in the public interest, unless Act No. 552/2003 Coll. on performance of work in the public interest, as amended, provides otherwise (Article 1 paragraph 4 of Act No. 552/2003 Coll.). Act No. 552/2003 Coll. does not regulate leave.

Employment relationships in the civil service are currently regulated in six acts. The main one is Act No. 55/2017 on the civil service and amending certain acts, as amended.

These acts do not establish any limitation as mentioned in the judgment.

The Labour Code (Act No. 311/2001 Coll.)

According to Article 103 paragraph 1 of the Labour Code, the basic amount of leave is at least four weeks. Paragraph 2 lists cases of leave of at least five weeks, while paragraph 3 (letters a/-d/) lists professions with at least eight weeks of leave within a calendar year.

According to Article 116 paragraph 1 of the Labour Code, the employee is entitled to wage compensation in the amount of his/her average earnings for annual leave taken. For the part of leave that exceeds four weeks of the basic amount of leave, which the employee could not take even by the end of the following calendar year, the employee is entitled to wage compensation in the amount of his/her average earnings (paragraph 2). The employee cannot be paid wage compensation for four weeks of the basic amount of leave not used, except if he/she could not take this leave due to the termination of the employment relationship (paragraph 3).

Act No. 55/2017 Coll. on the civil service

According to Article 100 of the Act, a civil servant is entitled to a functional salary for leave taken.

According to Article 171 paragraph 1 of the Act, the provisions of Article 103 paragraphs 1 and 2 and Article 116 paragraphs 2 and 3 of the Labour Code shall be applied appropriately to civil servants' employment relationships.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

(I) The minimum wage has been adjusted and amounts to EUR 1 253.90 gross per month for full-time work.

(II) Annexes to several sectoral collective agreements have been concluded which are mainly devoted to the adjustment of minimum amounts of basic pay and other payments, such as reimbursement of work-related costs, etc.

1 National Legislation

1.1 Adjustment of minimum wage

On the basis of Article 6 of the Minimum Wage Act (*'Zakon o minimalni plači (ZMinP)'*,OJ RS No. 13/10 et subseq.), the amount of minimum wage was adjusted (Minimum Wage Amount, *'Znesek minimalne plače'*, OJ RS No. 6/2024, 26 January 2024, p. 482).

From 01 January 2024 onwards, the minimum wage amounts to EUR 1 253.90 gross (monthly rate for full-time work).

It was EUR 1 203.36 in 2023, EUR 1 074.43 in 2022, EUR 1 024.24 in 2021 and EUR 940.58 in 2020.

2 Court Rulings

2.1 Working time –guard duty and border surveillance

The judgment of the Higher Labour and Social Court delivered on 16 November 2023 and published in the database of Slovenian case law on 23 January 2024 (No. Pdp 382/2023, ECLI:SI:VDSS:2023:PDP.382.2023) concerns the working time of a military personnel, an officer of the Slovenian Army, who claimed that the time spent on guard duty and state border surveillance must be counted as regular working time (and paid correspondingly), irrespective of whether he actually performed work during that period or not. The Court ruled that these activities performed by an officer are not of such a nature to be excluded from the scope of the Directive 2003/88. The Court ruled that during these periods of time, an officer of the Slovenian Army was on duty and available to his employer and did not have any possibility to manage this time freely, and therefore, these periods must be considered working time and paid correspondingly.

In the reasoning of this judgment, the Court also referred to the Supreme Court judgment dealing with the same/similar issue (No. VIII Ips 196/2018, 01 February 2022; ECLI:SI:VSRS:2022:VIII.IPS.196.2018) and to the CJEU judgment C-742/19. The Court set aside national provisions (according to which these periods of stand-by time were not counted as working time) and applied directly the relevant provisions of the Working Time Directive 2003/88. It is worth noting that the rules on working time in the Slovenian Army were later amended, see also July 2021 Flash Report, under 1.2.4. and 3.1).

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The case has no major implications for Slovenian law. The rules concerning the payment of an allowance in lieu of the days of paid annual leave accrued but not taken by the

date on which the employment relationship ends are the same for private and public sector employees. There are no such special rules for public sector employees which would exclude the payment of an allowance for reasons related to the control of public expenditure and the organisational needs of the public employer (similar to those in the Italian law at stake in case C-218/22).

4 Other Relevant Information

4.1 Collective bargaining

Annexes to several sectoral collective agreements have been concluded. The Annex to the Collective Agreement for the Construction Sector (‘Spremembe in dopolnitve Kolektivne pogodbe gradbenih dejavnosti, OJ RS No. 2/24, 12 January 2024, p. 96) and the Annex to the Collective Agreement for Real Estate Business (‘Tarifna priloga h Kolektivni pogodbi za dejavnost poslovanja z nepremičninami’, OJ RS No. 2/24, 12 January 2024, p. 98-99) are limited to the adjustment of minimum amounts of basic pay and some other payments, such as reimbursement of work-related costs, etc. The Annex to the Collective Agreement for Slovenia’s Trade Sector (‘Aneks številka 2 h Kolektivni pogodbi dejavnosti trgovine Slovenije’, OJ RS No. 2/24, 12 January 2024, p. 99-101) includes provisions on the adjustment of basic pay and other payments, as well on the place of work, trainees and probationary period. The Annex to the Collective Agreement for Slovenia's Electrical Industry (‘Dodatek h Kolektivni pogodbi za dejavnost elektroindustrije Slovenije’, OJ RS No. 4/24, 19 January 2024, p. 373) was concluded as well. The minimum amounts of basic pay have been adjusted and some other provisions amended. In the amended Article 40, the provision has been added according to which the representative trade unions in the companies can present their organisation and activities to the newly employed workers in an organised manner as agreed with the management of the company.

Spain

Summary

Parliament has not validated a Royal Decree Law that was adopted last month, hence Directive (EU) 2019/1158 has not yet been fully transposed.

1 National Legislation

1.1 Work-life balance

As mentioned in the December 2023 Flash Report, a Royal Decree Law was approved to fully transpose Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work-life Balance for Parents and Carers. This Directive introduces, *inter alia*, the accumulation of breastfeeding breaks as full working days for workers. A Royal Decree Law is a provision that is justified for urgent cases, and Parliament must ratify it within a period of 30 days from its adoption. However, for the first time in Spanish history, Parliament did not ratify a Royal Decree Law, resulting in the abolition of the aforementioned provision. It is anticipated that a new draft bill will be introduced shortly.

2 Court Rulings

2.1 Fixed-term contracts (equality and non-discrimination)

According to Article 14 of the Spanish Constitution and Article 15(6) of the Labour Code, temporary workers enjoy the same rights as permanent workers. The Spanish Supreme Court applied these articles and also referenced Directive 1999/70, reiterating that the employer is not allowed to establish different rates of pay for temporary and permanent workers.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

This ruling will not have any implications for Spain. Article 50(3) of the legal provision which regulates the rights and duties of public employees (Royal Legislative Decree 5/2015) explicitly prohibits the substitution of annual leave for an allowance payment. This article states that employees have the right to receive that allowance, even in case of voluntary resignation. This right also applies in situations such as retirement, permanent disability or death.

In the private sector, while Article 38 of the Labour Code does not contain rules as explicit as those included in Article 50(3) of Royal Legislative Decree 5/2015, workers have the right to receive an allowance in lieu of days of leave not taken at the end of the employment relationship.

It is uncertain how a court would respond in a similar case where the worker had not voluntarily taken annual leave. Nevertheless, Spanish law does not contain a rule that deprives the worker of the right to an allowance in lieu of the days of accrued paid annual leave.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

There are no developments to report this month.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

The CJEU held in its judgment Comune di Copertino that an employee must be entitled to compensation for unused annual leave days. Under Section 30 of the Swedish Annual Leave Act (*semesterlagen* [1977:480]), compensation for unused annual leave days shall be paid to the employee as soon as possible after an employment relationship has come to an end. Hence, Swedish law is in line with EU law as expressed in the Comune di Copertino judgment.

4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

Retained EU Law (REUL) Act legislation is now in force.

1 National Legislation

Nothing to report.

2 Court Rulings

Pong v *Moore* raised the question whether the liability for a harassment claim was to be transferred. After the claimant resigned, the alleged harasser had been transferred to the transferee. The EAT said the transferee could not be added as a defendant. When the individual does not transfer (in this case, the claimant), the rights and liabilities towards them do not transfer. This position does not change when the alleged harasser has transferred.

3 Implications of CJEU Rulings

3.1 Annual leave

CJEU case C-218/22, 18 January 2024, Comune di Copertino

In case C-218/22, the Court ruled that:

> *"Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave acquired, during both the last year of employment and previous years, which were not taken at the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not shown that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control."*

This issue has not arisen before the British courts and this decision is not binding on the UK, but it is likely the UK system would reach the same conclusion, albeit without reference to the Charter of Fundamental Rights.

4 Other Relevant Information

4.1 Retained EU Retained EU Law (Revocation and Reform) Act 2023

As previously reported, the REUL Bill received royal assent and is now an Act. All its key provisions came into force/operation on 01 January 2024. The default is that all Retained EU Law will remain except the 587 pieces listed in the Schedule to the Act which are now repealed, together with some other legislation listed in SI 2023/1143. In the labour law field, the Sex Discrimination Act 1975 (Application to Armed Forces, etc.) Regulations 1994 (S.I. 1994/3276) is also repealed. The government has called it a tidying up exercise:

> *"This piece of legislation no longer has any legal effect, as the Sex Discrimination Act 1975 was repealed by the Equality Act 2010. As a result the Sex Discrimination Act 1975 (Application to Armed Forces, etc.) Regulations 1994 are obsolete."*

Retained EU Law is now referred to as assimilated law; the principle of supremacy of EU law no longer applies and the general principles of law also no longer apply.

The dashboard has also been updated and yet more assimilated law has been found (total now 6 757 compared to around 3 000 originally). A report has been published on the state of Retained EU Law, including how SECTION 4 of the European Union (Withdrawal) Act 2018 (EUWA) 'sweeper' powers have been adapted (this is particularly relevant for Article 157 TFEU case law).

4.2 Tribunal fees

It might be recalled that in July 2013, the government introduced tribunal fees.

According to the consultation paper:

> *"The 2013 fee regime categorised ET claims into 'Type A' or 'Type B' claims with different fees payable dependent on whether the claim was a Type A or Type B claim. Type A claims (which covered simple disputes such as unpaid holiday pay) attracted an issue fee of £ 160 and a hearing fee of £ 230, totalling £ 390 in fees. Type B claims (which covered more complex disputes such as discrimination) attracted an issue fee of £ 250 and a hearing fee of £ 950, totalling £ 1200 in fees. The EAT attracted a £ 400 issue fee and a £ 1200 hearing fee, totalling £ 1600 in fees. The introduction of fees in 2013 led to a substantial fall in the number of claims brought to the ET. Case volumes fell by 53 per cent in the 12 months after the fee change - from c. 59 000 cases between July 2012 and June 2013 to c. 28 000 cases between July 2013 and June 2014."*

As the consultation paper explains:

> *"In R (Unison) v The Lord Chancellor [2017] UKSC 51, the Supreme Court quashed the Fees Order as it held that the fees were unlawful as (a) they were in practice unaffordable, and (b) they rendered pursuing non-monetary and low value claims – which suffered a greater fall in volumes – futile and irrational, which effectively prevented access to justice. Furthermore, the fee structure was found to be indirectly discriminatory against women and individuals with protected characteristics, who were more likely to bring Type B claims and therefore liable to pay the higher fee."*

There has now been a consultation about introducing a single fee of £ 55.

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