Flash Reports on Labour Law
May 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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Executive Summary

National level developments

In May 2024, 29 countries reported labour law developments (all countries except for **CY** and **LV**). The following were of particular significance from an EU law perspective:

Implementation of EU Directives

In **Finland**, the Ministry of Social Affairs and Health has appointed a tripartite working group, whose task is to prepare a proposal for the national implementation of the Pay Transparency Directive.

In **Hungary**, the Labour Code has been amended to bring the law in line with the Minimum Wage Directive 2022/2041.

In **Liechtenstein**, a draft law was issued with the aim of transposing Directive 2019/2121, which amends Directive 2017/1132 regarding cross-border conversions, mergers and divisions. This Directive broadens the scope for cross-border restructuring, facilitating structural adaptations for companies operating internationally in response to evolving market conditions and regulatory frameworks.

Finally, in **Poland**, legislative work is underway to amend the Accounting Act, the Act on Statutory Auditors, Audit Firms and Public Supervision and Certain Other Acts. One of the objectives of the amendments is to implement the Corporate Sustainability Reporting Directive 2022/2464, which will result in an obligation for employers to report on corporate sustainability.

Fixed-term work

In **Austria**, the Supreme Court issued a decision on the successive use of consecutive fixed-term employment contracts. It was determined that the employment relationship should be treated as one of indefinite duration when successive fixed-term contracts have been concluded, unless special economic or social reasons justify the conclusion of such consecutive fixed-term contracts.

In the **Czech Republic**, the Supreme Court issued a decision setting out the interpretative aspects of the transfer of a fixed-term employment contract into one of indefinite duration on the basis of the continuation of work with the employer's knowledge.

Collective redundancies

In **Germany**, the Federal Labour Court has requested the Court of Justice of the European Union (CJEU) to issue a preliminary ruling on the interpretation of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

Moreover, in **Ireland**, legislation has been enacted to enhance the protection of employees in a collective redundancy where the employer is insolvent. The legislation was introduced in response to a commitment in the government programme to review whether the legal provisions surrounding collective redundancies and the liquidation of companies effectively protected workers' rights.

Temporary agency work

In **Lithuania**, the Supreme Court exempted the presumed temporary work agency from the obligation to compensate for damages caused by its employee (theft of computers from the user undertaking) due to the absence of formal evidence substantiating the temporary work arrangement.

In **Malta**, the original Temporary Agency Workers Regulation of 2010 was repealed and replaced by the newly promulgated Temporary Agency Workers Regulations of 2024. This new regime is explicitly designed to operate

in conjunction with the Employment Agencies Regulations of 2024.

Transfer of undertakings

In **Austria**, the Supreme Court issued a decision on a case in which an employee had terminated the employment relationship prior to the transfer of undertaking and was subsequently employed by the transferee. The dispute centred around whether this action constituted a circumvention of the automatic change of employer in the event of a transfer of undertaking.

In the **Netherlands**, a new bill was introduced with the purpose of enhancing the protection of employees in the event of a transfer of undertaking that has declared bankruptcy. It addresses the difference between the protection of employees employed in an undertaking that has declared bankruptcy and employees outside such a situation.

In **Portugal,** the Appeal Court of Oporto reviewed whether the employee's objection to the transfer of his employment contract was lawful.

Working time

In **Greece**, the Supreme Court ruled that an employee's commute from home to work and back shall generally not be considered working time but rather time spent fulfilling the obligation to perform work. However, if an employee leaves home earlier and returns later to transport co-workers to and from the workplace, this travel time shall be considered working time.

In **France**, Court of Cassation issued two clarifications concerning the minimum duration of part-time work. On the one hand, it has clarified the penalty applicable to contracts that provide for irregular working hours that are shorter than those stipulated by law. Secondly, it has clarified the application of this minimum working time to students from third countries.

Finally, in **Iceland**, the Supreme Court confirmed the judgment of the Court of Appeal in a case concerning the definition of working time in accordance with the Working Time Directive when an employee travels abroad for work.

Other developments

In **Italy**, the Court of Cassazione dealt with the dismissal of a disabled worker. The National Labour Inspectorate clarified the procedures to revoke the resignation of a working mother or father.

In **Luxembourg**, a decision of the Court of Appeal addressed the employee's right to disconnect during leave.

Finally, **Sweden** will soon join Protocol 16 of to the European Court of Human Rights (ECHR).

Implications of CJEU Rulings

Fixed-term work

This Flash Report analyses the implications of a CJEU ruling on fixed-term work.

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The CJEU cases pertained to Spanish workers engaged under contracts termed as non-permanent but of indefinite duration within the public sector.

It was determined that these workers must be classified as fixed-term workers as defined by the Framework Agreement on Fixed-Term Work annexed to Directive 1999/70/EC. Consequently, these workers fall within the scope of this directive.

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 **Spain**, particularly in its public sector employment practices. While efforts have been made to address abuse of successive fixed-term contracts, reconciling EU law with Spain's constitutional principles, such as merit-based selection for permanent civil service positions, ambiguities remain. Recent Supreme Court rulings indicate ongoing efforts to navigate these complexities, but achieving full compliance with both EU and constitutional requirements remains a significant challenge for Spain.

The recent CJEU ruling may have implications for the **Czech Republic**, particularly as regards the Act on Civil Service, which favours fixed-term contracts for civil servants. The compatibility of the broad justifications for concluding fixed-term contracts, as outlined in Government Decree No. 137/2015 Coll., with the Directive will require judicial review. Czech labour law generally aligns with EU principles, but specific civil service provisions may require further reassessment.

The ruling may also have implications for **Estonian** legislation, particularly concerning fixed-term employment relationships. The CJEU ruling will likely require Estonia to reassess and possibly amend its existing legislation to ensure comprehensive protection for fixed-term workers, both in the private and public sectors. This could mean adjustments to the Civil Service Act's compensation limits to better align with the Directive's standards.

Furthermore, the CJEU ruling may have implications for **France**. French law allows for non-tenured staff and contract agents in the civil service, often bypassing competitive examinations. While French law does not clearly regulate the total duration of fixed-term contracts for the same employee, the ruling mandates that such abuses must be effectively sanctioned. Despite ongoing reforms, the French legislator has not yet introduced measures to adequately penalise this type of abuse, leaving it to the courts to address violations on a case-by-case basis.

Moreover, the CJEU judgment is relevant for **Greece**. The ruling challenges Greek jurisprudence, which views severance pay as sufficient to prevent abuses of successive fixed-term contracts, necessitating further alignment with EU standards.

The CJEU ruling may prompt a review of the national law in **Portugal** to ensure alignment with Clause 5 of the Framework Agreement, potentially impacting the regulation of fixed-term employment contracts in the country.

The CJEU ruling may have implications for secondary law in **Romania**. The CJEU decision underscores the necessity for Romanian courts to apply secondary legislation consistently with the Labour Code and the Directive's provisions, reinforcing the protection of workers' rights in fixed-term employment relationships.

The CJEU's decision may also have implications for **Sweden**, affecting how

permanent positions are advertised and requiring stricter adherence to EU standards in collective agreements. The judgment could particularly impact Swedish universities and public sector employment practices, necessitating a review to ensure compliance with Directive 1999/70/EC.

Table 1: Major labour law developments

Topic	Countries
Annual leave	AT NL
Collective bargaining and collective action	FI HR NL NO SE SL
Collective redundancies	DE IE
Dismissal protection	DK IT RO
Fixed-term work	AT CZ
Migrant workers	BG NL PL
Minimum wage	CZ HU
Occupational safety and health	FR SK
Posting of workers	AT
Telework	AT FR
Temporary agency work	LT MT
Transfer of undertakings	AT NL PT
Right to disconnect	LU
Whistleblowing	PL
Work-life balance	ES
Working time	EL FR IS

Austria

Summary

(I) The Austrian government has proposed an amendment of the current Act on Working from Home (WFH) to cover remote/teleworking in general. The proposed Act was under public consultation until 21 May 2024, and is currently being reviewed by the Ministry of Labour and Economy.

(II) Four decisions of interest from an EU labour law perspective have been published in May that deal with questions of terminations prior to transfers of an undertaking, successive fixed-term employment contracts and the posting of workers.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Termination of an employment relationship prior to transfer of undertaking

Austrian Supreme Court (Oberster Gerichtshof – OGH) 8 ObA 87/23m, 25 April 2024

§ 3 (1) Act on the Adaptation of Employment Contract Law (*Arbeitsvertragsrechtsanpassungsgesetz – AVRAG*), transposing Directive 2003/21/EC, provides as follows (unofficial translation by the author):

> *"If a company, business or part of a business is transferred to another owner (transfer of undertaking), the new owner as the employer assumes all rights and obligations established in the existing employment relationships at the time of the transfer."*

In the present case, the employee terminated the employment relationship prior to the transfer of undertaking and was later employed by the transferee. It was disputed whether this constituted a circumvention of the automatic change of employer in case of a transfer of undertaking. Based on this argument, the plaintiff (the employee) sued the transferee for the redundancy payment accrued with the transferor (who was unable to pay it).

Unlike the Court of Appeals, the Supreme Court sided with the defendant, pointing out that the termination of the employment relationship and the immediate conclusion of an employment contract with the transferee may be deemed ineffective as a circumvention of the automatic change of employer as provided for in § 3 (1) AVRAG. It is deemed effective, however, if the termination and conclusion of an employment relationship is more favourable for the employee than the transfer to the transferee as provided for by law (established case law, cf. OGH RS0102122; RS0118202). Whether this is the case must be determined as part of an overall comparison of employment conditions (Supreme Court RS0118202). The Supreme Court has already stated that an employee may not be deprived of all options in connection with a transfer of undertaking, especially the possibility of becoming eligible for severance pay by terminating the employment relationship under such circumstances (Supreme Court 9 ObA 17/03w). Accordingly, it was decisive in the present case that the plaintiff was eligible for a severance payment due to the termination of the employment relationship, which, because his employment relationship had exceeded 25 years, amounted to 12 months' pay. On the other hand, if the previous employment relationship had continued,

the plaintiff would have been permanently bound to his new employer (the transferee) and would have lost his eligibility to severance pay in the event of a termination initiated by him. Since terminating the employment relationship was more favourable for the employee, it was deemed effective, and the employment relationship could not be transferred to the defendant.

The ruling is in line with EU regulations, as Directive 2003/21/EC does not prohibit national provisions that are more favourable for the employee.

2.2 Successive fixed-term employment contracts with teachers

Austrian Supreme Court (Oberster Gerichtshof – OGH), 8 ObA 12/24h, 25 April 2024

As no explicit provision prohibits the successive use of consecutive fixed-term employment contracts, recourse is taken to general notions of civil law. Based on § 879 General Civil Code *(Allgemeines Bürgerliches Gesetzbuch* – ABGB), the Austrian Supreme Court has determined that when consecutive fixed-term contracts have been concluded, the employment relationship should be treated as one of indefinite duration, unless special economic or social reasons justify the conclusion of consecutive fixed-term contracts (RS0021824).

Some special acts explicitly permit the conclusion of successive fixed-term contracts under certain conditions, such as in the present case concerning teachers covered by the Act on State Teachers (*Landesvertragslehrpersonengesetz* – LVG). The plaintiff claimed that the Act's provisions contravened Art. 30 CFR and Directive 1999/70/EC, especially Art 5 (1) of the Framework Agreement on Fixed-term Employment, and that he therefore was to be considered as being employed under a contract of indefinite duration.

The Supreme Court referred to its established case law on §§ 24, 27 Theatre Employment Act (*Theaterarbeitsgesetz* – TAG) (Supreme Court 8 ObA 58/22w, 9 ObA 11/22s, 9 ObA 21/23p – see December 2022 Flash Report), which states that the applicability of Directive 1999/70/EC and the question of the extent to which the provisions of TAG on fixed-term contracts conflict with Art 5 (1) of the Directive did not need to be clarified, considering that even the positive assumption of a transposition contrary to the Directive would not justify the establishment of a valid, permanent employment relationship.

As reported in the December 2022 Flash Report, the existing case law on the Theatre Employment Act, which is now applied to other legislative acts in line with the CJEU's case law and concerns the direct applicability of a Directive. It also shows again that conflicts relating to the proper transposition of Directives often cannot be resolved before the national courts but need to be dealt with through other procedures, namely by proceedings concerning treaty violations or state liability.

2.3 Freedom to provide services and the obligation to pay contributions to the construction workers' annual leave and severance payment fund

*Austrian Supreme Court (*Oberster Gerichtshof – OGH*), 8 ObA 34/23t, 25 April 2024*

The plaintiff who posted workers to Austria claimed that the obligation to pay contributions to the construction workers' annual leave and severance payment fund breaches the freedom to provide services.

The Supreme Court did not agree with this argument and stated that in decision 8 ObA 2/11v of 25 October 2011 already pointed out that the exercise of the freedom to provide services does not exempt the service provider from complying with the conditions imposed by the recipient state on its own nationals when exercising such a

service. According to the CJEU's case law (especially C-165/98, *Finalarte*), even rules that are likely to restrict the freedom to provide services are justified by overriding—not only economic—reasons in the public interest. These rules must be appropriate for achieving the objective and may not be excessive with regard to the legal provisions to which the provider is subject to in the State of origin. Moreover, they must be applied in a non-discriminatory manner. According to the Supreme Court, the objectives formulated in the Posting of Workers Directive for the protection of minimum employment standards constitute sufficient grounds for justifying restrictions to the freedom to provide services in the name of general interest; since contributions to the construction workers' annual leave and severance payment fund are covered in this regard, they must be paid by a service provider that posts workers to Austria.

2.4 Sufficient links to Austria to apply the legislation on posting of workers

Austrian Supreme Administrative Court (Verwaltungsgerichtshof – VwGH), Ra 2022/11/0205, 2 April 2024

A Polish transport company that delivered two palettes of tile accessories from Germany to two locations in Austria was fined by the Austrian authorities for not providing the necessary employment documentation prescribed in the Act to Fight Wage and Social Dumping (*Lohn- und Sozialdumping-Bekämpfungsgesetz* – LSD-BG), which transposes the Posting of Workers Directive (PWD) 2014/67/EC. It was disputed that sufficient links to Austria had been established to apply the Austrian posting of workers legislation.

The Supreme Administrative Court (VwGH) ruled that sufficient links had existed and pointed out that the Austrian legislator adhered to the notion of posting established in the PWD 96/71/EC and later the PWD 2014/67/EC. According to CJEU case law, to assess whether a posting has taken place within the scope of the PWD has taken, the court must determine whether sufficient links to the territory of the respective Member State have been established. This requires an overall assessment of all aspects that characterise the worker's activity (CJEU of 01 December 2020, *Federatie Nederlandse Vakbeweging*, C-815/18, para. 45, with reference to CJEU of 19 December 2019, *Dobersberger*, C-16/18, para. 31; and VwGH of 07 September 2023, Ra 2022/11/0128 with further references).

In the present case, the (lower) Administrative Court determined that based on the findings on the activity being carried out in Austria by the Polish company's employee, the respective activity—in view of the approximately eight-hour stay in Austria in the course of a transport journey, during which the employee did not carry out any other activities apart from unloading two pallets of tile accessories—did not establish sufficient links to Austria to warrant application of the PWD. The Austrian LSD-BG therefore did not apply and there was no obligation to provide any documentation.

With its decision, the VwGH follow its line of rulings (cf. VwGH 07 September 2023, Ra 2022/11/0128 and others), which explicitly refer to the CJEU's case law in *Federatie Nederlandse Vakbeweging* and *Dobersberger* and focuses on aligning with the PWD, which thus far has succeeded.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

There is no explicit provision in Austria that prohibits the successive use of consecutive fixed-term employment contracts in the private sector. The courts have taken recourse to general notions of civil law for decades, and have treated consecutive fixed-term

employment contracts as a circumvention of the protection against dismissal unless it is justified. Based on the *bones more*-clause in § 879 General Civil Code (*Allgemeines Bürgerliches Gesetzbuch* – ABGB), the Austrian Supreme Court thus ruled that the conclusion of consecutive fixed-term contracts was to be treated as the establishment of an employment relationship of indefinite duration, unless special economic or social reasons justify it (RS0021824).

The law is more explicit for the public sector: the Act on Federal Contractual Public Servants (Vertragsbedienstetengesetz – VBG) provides as follows in § 4 (4) (unofficial translation by the author):

> *"An employment relationship that has been entered into for a fixed term may be extended once for an additional fixed term; this extension may not exceed three months. If the employment relationship continues beyond this period, it shall be from then on be considered a relationship that has been entered into for an indefinite duration from the outset."*

The sanction for abuse of fixed-term employment contracts in Austria is the conversion into a contract of indefinite duration. This applies to both the public as well as the private sector. In the authors' opinion, this is an adequate measure to prevent abuse of successive fixed-term contracts; the CJEU's decision *Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid* does not have any implications for Austria.

4 Other Relevant Information

4.1 Proposal for new Act on Remote Working/Teleworking

During the COVID pandemic in March 2021, the Austrian legislator introduced an Act on Working from Home (*(Telearbeitsgesetz – TelearbG*, 337/ME XXVII. GP) (hereafter WFH). The Act covers remote working exclusively from the employee's home, or the home of a close relative upon agreement between the employer and employee. Remote working/teleworking from other locations was not covered by the Act, and no right to WFH was introduced.

The new Act provides a framework for WFH. One of the key aspects of the previous legislation was that it required the employer to either provide digital work equipment (including internet), or to pay compensation in case the employee used his/her own digital work equipment. Lump sum compensation was (and continues to be) tax free for EUR 3 per day for a full day of working from home, for up to EUR 100 per year (e.g. EUR 25 per month). The employee continues to be entitled to compensation for other costs (such as heating, electricity, etc) in line with general contract law, which means that the right to compensation (other than compensation for digital work equipment provided by the employee him-/herself) may be waived in the contract. Moreover, the Act on Work Accident Insurance was amended to ensure full inclusion of work accidents that might occur while WFH. Labour inspectorates were not given the right to inspect employees' homes to ensure compliance with health and safety regulations, but employers are required to request their employees to self-evaluate, and if necessary, adapt their workplace at home. The Act on Working from Home did not amend or touch upon working time laws or existing working time agreements. The conclusion of work council agreements on WFH is optional.

The legislator was criticised early on for not having introduced a comprehensive scheme on remote ('mobile') working. With its recent legislative proposal, the government has addressed this criticism, and proposes adapting the Act on Working from Home to the Act on Teleworking.

So far, the proposal mainly replaces the wording 'working from home' with 'teleworking' and adds that teleworking is not only defined by working from one's own home, but from any location chosen by the employee that is outside the employer's premises. It is

recommended to agree on location(s) in writing for verification purposes. The proposed Act does not amend the existing regulations on compensation for working from home or workplace safety. It is not proposed to increase the amount of tax-free compensation for working from home, despite rising inflation in recent years. Furthermore, it is not proposed to introduce the right to teleworking, an agreement between the employer and employee continues to be required.

However, an amendment to work accident insurance, particularly workplace accident insurance coverage for the commute to work is proposed: currently, accidents on the commute to work are generally covered by work accident insurance. The introduction of two 'types' of teleworking is proposed: working from home from a holiday home, from the home of a close relative or from a co-working space are defined as teleworking spaces in the strict sense. In case the employee chooses to work from the home of a close relative, or from a co-working space, accidents on the commute to work continue to be covered by work accident insurance, provided that the chosen teleworking space is within a similar distance from the employee's home as their workplace at the employer's premises would be. All other workplaces, specifically those that are freely chosen by the employee, are defined as teleworking spaces in the broader sense: while work accident insurance covers work accidents, accidents on the commute to these workspaces are not covered.

The proposal was under public consultation and 20 statements were submitted by 21 May, which are now under review by the Ministry for Labour and Economy. While the Chamber of Commerce agrees with the proposal, the Chamber of Labour as well as the Austrian Trade Union have criticised the proposed amendment to the Act on Work Accident Insurance, as well as the lack of improvement compared to the previous legislation in terms of health and safety, reimbursement of costs, and only optional involvement of work council representatives on teleworking arrangements.

More information is available here and here.

Belgium

Summary

The Law of 24 March 2024 amending the Law of 26 June 2002 on the Closure of Undertakings introduces the possibility of excluding certain sectors from the concept of undertaking without commercial or industrial finality. The current legislative amendment introduces an option to classify these non-profit sectors as 'belonging to the profit sector' when they face a high structural economic closure risk.

1 National Legislation

1.1 Closure of undertakings

The Law of 24 March 2024, amending the Law of 26 June 2002 on the closure of undertakings (see: *Montieur belge* of 10 April 2024), introduces the possibility of excluding certain sectors from the definition of undertakings without commercial or industrial finality.

With this amendment, the Closure Act of 26 June 2002 now allows the exclusion of specific sectors with undertakings without commercial or industrial finality from that particular concept, if these sectors are characterised by a structural economic closure risk. The Closure Fund's authority is divided between the management committee that is responsible for companies with commercial or industrial finality, and the special committee that is responsible for companies without commercial or industrial finality (non-profit) and the liberal professions. Under the current legislative amendment, there is a peculiar option to reclassify these sectors as 'belonging to the profit sector'. As a result, they will be required to make higher standard contributions to the Closure Fund. A Royal Decree will define 'structural economic closure risk' and 'sector', determine which sectors should be excluded, and establish the conditions for exclusion, based on the unanimous advice of the Special Committee of the Closure Fund.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The case concerned the Spanish concept of a 'worker having a non-permanent contract of indefinite duration' (known as a '*trabajador indefinido no fijo*') in the public sector, which is a judicial creation that must be distinguished from the concept 'permanent worker' (known as a '*trabajador fijo*'). The referring court noted that while the termination of a permanent worker's contract is subject to the rules on terminations and the general conditions outlined in the Spanish Workers' Statute, the termination of non-permanent contracts of indefinite duration is subject to specific grounds. When the employment relationship is reclassified as a non-permanent contract of indefinite duration, the administration must follow a procedure for filling the post held by the worker employed under a non-permanent contract of indefinite duration, adhering to the Spanish constitutional principles of publicity, equality, merit and ability. Once that post has been filled, the worker's non-permanent contract of indefinite duration would

be terminated, unless that worker had himself or herself participated in the procedure and was awarded that post.

The ruling is of little relevance for Belgian law because there is no employment contract in Belgium that is comparable to the non-permanent employment contract of indefinite duration, neither in the private, nor in the public sector.

Nevertheless, points 72 to 74 of the ruling are particularly relevant for Belgium. Referring to previous rulings, the Member States must establish specific rules for the application of the term 'successive' within the meaning of Directive 1999/70. However, the margin of appreciation left to national authorities is not unlimited, as it cannot compromise the objective or practical effect of the Directive on the Framework Agreement. Specifically, this discretion must not be exercised in a way that could lead to a situation of abuse and thus thwart the Directive's objective The limits to the Member States' discretion are particularly crucial with respect to key concepts, such as whether employment relationships are successive, which determine the definition of the very scope of national law provisions designed to implement the Framework Agreement. In Belgium, Articles 10 and 10bis of the Employment Contracts Law of 03 July 1978 regulate the concept of 'successive employment contracts', but the concept must be interpreted through case law.

4 Other Relevant Information

Nothing to report.

Bulgaria

Summary

New regulations on seasonal work of third-country nationals were introduced.

1 National Legislation

1.1 Long-term seasonal work

The National Assembly has adopted the Law on Amendments and Supplements to the Law on Foreigners in the Republic of Bulgaria (promulgated in State Gazette No. 39 of 01 May 2024). The Law transposes Directive 2014/36/EC.

The basic amendments concern the procedure for granting residence permissions for long-term seasonal work requirements (Art. 24I of the Law).

Within seven days of the entry of a third-country national to the territory of the Republic of Bulgaria on the basis of a visa, the employer or a person authorised by the employer is required to appear before the Migration Directorate or the migration department/sector/group of the Ministry of the Interior's regional directorate together with the respective third-country national, and to attach a copy of his/her passport with the page that includes the individual's visa and the mandatory medical insurance valid on the territory of the Republic of Bulgaria. Upon the expiry of the permitted maximum period of residence, the third-country national may continue to remain on the territory of the Republic of Bulgaria, if he/she has been issued a residence permit and does not need to leave the territory of the country.

The third-country national may continue working for the same employer or change employers for the duration of his/her new employment contract, but for no more than 180 consecutive days within a 12-month period from the initial registration, without having to leave the territory of the Republic of Bulgaria, if he/her holds a valid visa. The third-country national must submit an application in accordance with the regulations on the implementation of the law to the Migration Directorate or the migration department/sector/group of the Ministry of the Interior's regional directorate 30 days before the expiry of third-country national's legal residence on the territory of the country to which the respective documents apply.

For a long-term residence permit to be issued for the purpose of employment as a seasonal worker, the Migration Directorate or the migration department/sector/group of the Ministry of the Interior's regional directorate must send the application with the attached documents to the Employment Agency and to the State Agency National Security electronically, which, within 14 days from receiving them, must issue a written statement in accordance with the law to the State Agency National Security. The Executive Director of the Employment Agency or the officials authorised by him/her shall electronically send a written statement about the presence or absence of grounds for providing access to the labour market to the Migration Directorate or to the migration department/sector/group of the Ministry of the Interior's regional directorate within ten days of receiving the application from the Employment Agency.

The director of the Migration Directorate or the director of the relevant regional directorate of the Ministry of the Interior or officials authorised by these bodies shall approve or reject the issuance of a long-term residence permit for the purpose of employment as a seasonal worker within three days of the publication of the Employment Agency's opinion. Once a long-term residence permit for the purpose of employment as a seasonal worker is issued, a document is delivered by the Migration Directorate or the migration department/sector/group of the Ministry of the Interior's

regional directorate in accordance with the requirements of Regulation (EC) No. 1030/2002, entering 'seasonal worker' in the 'permit type' field. The employer shall notify the Migration Directorate or the migration department/sector/group of the Ministry of the Interior's regional directorate to terminate the employment relationship with the third-country national within three days from the date of termination of employment.

The procedure for granting a long-term residence permit for the purpose of employment as a seasonal worker may not exceed 30 days.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The judgment in *joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024* does not have any implications for Bulgarian legislation and national practice in relation to the interpretation given on Clauses 2, 3 and 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP

There is no legal situation in national practice of "*employment on a non-permanent contract of indefinite duration*". The conclusion of fixed-term employment contracts is possible under specific circumstances provided for in the Labour Code (Article 68). The provisions of Article 68, paras 3 and 4 of the Labour Code contain the conditions under which a fixed-term employment contract may be concluded:

(a) for the performance of temporary, seasonal or short-term work and activities;

(b) with newly recruited workers in enterprises declared bankrupt or in liquidation;

(c) as an 'exception', a fixed-term employment contract for a period of at least one year may be concluded for assignments and activities that are not of a temporary, seasonal or short-term nature. § 1(8) of the Labour Code's additional provisions provides that an 'exception' within the meaning of Article 68, para 4 exists for specific economic, technological, financial, market and other objective reasons of a similar nature that exist at the time of conclusion of the employment contract, specified in the contract and determining its duration;

(d) For assignments and activities that are not of a temporary, seasonal or short-term nature, and subject to an exception and at the written request of the employee, an employment contract may be concluded for a period of less than one year.

In the cases specified in points (c) and (d), a successive fixed-term employment contract with the same employee for the same type of work may be concluded for a period of at least one year.

If the employment contract is concluded in violation of these rules, it shall be deemed to have been concluded for an indefinite duration.

A fixed-term employment contract is converted into a contract of indefinite duration if the employee continues to work beyond the agreed period by five working days or more without a written objection by the employer and if the post is vacant (Article 69 of the Labour Code).

The work of the administration is carried out by civil servants and persons working under an employment relationship. Fixed-term relationships in the public sector are established on specific grounds: for a specific mandate (a period provided for by a special law) or to replace a civil servant who is absent from work for more than three months.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

(I) The new Regulations on the Content and Manner of Keeping Records on Workers employed by the employer has been issued by the Minister of Labour, Pension System, Family and Social Policy.

(II) The application of the Amended Collective Agreement for Construction of 2024 has been extended by ministerial decree to all employers and employees in the Republic of Croatia engaged in the field of construction.

1 National Legislation

1.1 Regulations on Content and Manner of Keeping Records on Workers

The Regulations on the Content and Manner of Keeping Records on Workers employed by the employer has been issued by the Minister of Labour, Pension System, Family and Social Policy (Official Gazette No 55/2024). With the entry into force of these Regulations, the Regulation on the Content and Manner of Keeping Records on Workers (Official Gazette, No. 73/2017) ceases to be valid. The employer is required to maintain records on workers who work for him/her based on an employment contract, natural persons who provide services to him/her based on other contracts and records on working time of his/her employees (Article 2 (1)). The Regulations contain, among others, provisions on the content of records on workers (Article 3), the duration of the period for which the obligation to retain data on the worker (Article 7), the content and manner of keeping records of employees' working hours (Article 13), the duty to keep records of the working hours of workers who are posted by a foreign employer to work in the Republic of Croatia (Article 14), the duty to keep records of the working hours of remote workers and of teleworkers (Articles 15 and 16), etc.

1.2 Extended application of the Amended Collective Agreement for Construction

The application of the Amended Collective Agreement for Construction of 2024 has been extended by ministerial decree (Official Gazette No. 64/2024). The Minister of Labour, Pension System, Family and Social Policy has extended it to cover all employers and employees in the Republic of Croatia engaged in the construction industry.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

Contrary to Spanish legislation, Croatian legislation does not regulate 'non-permanent contacts of indefinite duration'. Since case C-59/22 refers to seasonal work, it is worth mentioning that there are several possibilities for employers and seasonal workers in

Croatia to regulate their employment relationship. Article 16 of the Labour Act of 2014 (last amended in 2023) states:

> (1) The employer may, for work that is mainly performed seasonally, conclude an employment contract with the employee for permanent seasonal work.
>
> (2) Seasonal work, as defined by this Act, refers to work that experiences a temporary increase in scope and intensity due to seasonal fluctuations of certain business activities. This means that during certain periods of the calendar year, demand for such work increases significantly, and may cumulatively last up to a total of nine months within a calendar year. Conversely, demand for such work decreases or disappears entirely during other periods.
>
> (3) An employment contract for a permanent seasonal job can be concluded for an indefinite period or for a fixed term.
>
> (4) If an employment contract of indefinite duration is concluded for the performance of permanent seasonal work, the employee and employer may agree on mutual rights and obligations during the temporary interruption in the performance of seasonal work, namely:
>
> > 1. that due to the temporary interruption, the worker is not required to perform the contracted work, and the employer is not required to pay the salary, i.e. salary compensation, whereby the worker is not deregistered from compulsory insurance and remains liable to calculate and pay contributions according to a special regulation, or
> >
> > 2. that during a temporary break in the performance of work, the employment relationship of a permanent seasonal worker is suspended, whereby the employer deregisters him/her from mandatory insurance, and the worker can enter into an employment contract with another employer during the specified period.
>
> (5) If the employer concludes a fixed-term employment contract for permanent seasonal work with an employee for the performance of permanent seasonal work, s/he is required to offer the worker an employment contract for the performance of work in the next season within the agreed period, and is required to apply for extended pension insurance, the person liable for contributions and the person liable for calculation and payment of contributions after the termination of that contract during a temporary interruption in the performance of work.
>
> (6) As an exception to paragraph 5 of this Article, the employer shall not be required to apply for extended pension insurance, nor be liable to contribute or to calculate and pay contributions following the termination of that contract during a temporary break in the performance of work, if, at the request of the worker, concluded a written agreement about it.
>
> (7) In addition to the information established in Article 15, paragraph 1 of this Act, a fixed-term employment contract for permanent seasonal jobs must also contain additional information about:
>
> > 1. the conditions and time for which the employer will calculate and pay the contribution for extended pension insurance;
> >
> > 2. the deadline by which the employer is required to offer the worker a contract of employment for the performance of work in the next season;
> >
> > 3. the deadline by which the worker is required to declare the offer from point 2 of this paragraph, which cannot be shorter than eight days;
> >
> > 4. settlement of accommodation costs, if they exist.

> (8) If the worker unreasonably rejects an offer to enter an employment contract in the next season, the employer has the right to ask the worker for the return of the funds for the contributions paid, if s/he paid them in accordance with the relevant obligation from paragraph 5 of this Article.
>
> (9) An unjustified rejection of an offer to conclude an employment contract in the next season is considered to be a rejection of an offer to conclude an employment contract in which the scope of rights and obligations is equal to or greater than the previously concluded employment contract.
>
> (10) Instead of the information indicated in paragraph 7, items 1 and 4 of this Article, the contract may refer to the corresponding collective agreement or work regulations governing these issues.

Regarding the consequences of the misuse of successive fixed-term contracts, the Labour Act provides for the conversion of a fixed-term contract into one of indefinite duration (Article 12 (10)). Apart from this, according to Article 228 of the Labour Act,

> (1) A fine between EUR 4110.00 to EUR 7960.00 shall be imposed on an employer of a legal entity for a misdemeanour:
>
> > 1. if s/he concludes a fixed-term employment contract with the worker for which there is no objective reason, i.e. if s/he does not state an objective reason in that contract or in the written confirmation of the concluded employment contract, or if the employment contract is concluded for a duration of more than three years (Article 12(1), (2) and (3);
> >
> > 2. if s/he concludes several consecutive fixed-term employment contracts with the same worker whose total duration, including the first employment contract, is uninterrupted for more than three years, unless it is necessary to replace a temporarily absent worker due to the completion of work related to a project that includes financing from European Union funds or is permitted by a special law or collective agreement due to some other objective reason (Article 12(4) and (7));
> >
> > 3. if s/he concludes a fixed-term employment contract with the worker for seasonal work contrary to the provisions of this Act (Article 12(11)).

It can therefore be concluded that the CJEU's judgment in joined cases C-59/22, C-110/22 and C-159/22 will have no implications for Croatian law.

4 Other Relevant Information

Nothing to report.

Cyprus

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 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

In the present case, the CJEU decided the following:

1. Clauses 2 and 3 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that a worker having a non-permanent contract of indefinite duration must be regarded as a fixed-term worker, within the meaning of that Framework Agreement, and therefore, as falling within the scope of that agreement.

2. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as meaning that the expression 'use of successive fixed-term employment contracts or relationships' in that provision encompasses a situation in which, since the administration concerned failed to organise within the relevant deadline a selection procedure seeking definitively to fill the post occupied by a worker having a non-permanent contract of indefinite duration, that worker's temporary contract with that administration was automatically extended.

3. Clause 5(1)(a) to (c) of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation which does not provide for any of the measures referred to in that provision or an 'equivalent legal measure', within the meaning of that provision, to prevent the abuse of non-permanent contracts of indefinite duration.

4. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation which provides for the payment of limited compensation, equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration successively extended, where the payment of that end-of-contract compensation is independent of any consideration relating to the lawful or abusive nature of the use of those contracts.

5. Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national

provisions under which 'unlawful actions' give rise to liability on the part of the public administrations, 'in accordance with the rules in force in each of [those] public administrations', where those national provisions are not effective and a deterrent to ensure that the measures taken pursuant to that clause are fully effective.

6. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation which provides for the organisation of procedures for the consolidation of temporary employment, by means of the publication of vacancy notices to fill the posts occupied by temporary workers, including non-permanent workers having contracts of indefinite duration, where that organisation is independent of any consideration relating to the abusive nature of the use of those temporary contracts.

7. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as meaning that in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive fixed-term contracts, including non-permanent contracts of indefinite duration which have been extended successively, the conversion of those temporary contacts into permanent contracts is capable of constituting such a measure. It is, as the case may be, for the national court to amend the established national case law if it is based on an interpretation of the provisions of national law, including constitutional provisions, which is incompatible with the objectives of Directive 1999/70 and, in particular, of Clause 5 of the Framework Agreement.

In Cyprus, fixed-term work is regulated by the law (FT Law: Law 98 (I) 2003, 25 July, 2003;. Greek title: Ο Περί Εργοδοτουμένων με Εργασία Ορισμένου Χρόνου (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμος του 2003) purporting to transpose Directive 1999/70/EC on Employees with Fixed-term Work (Prohibition of Less Favourable Treatment) of 2003, herein referred to as the 'Framework Agreement' or 'FAD'. The law entered into force a year prior to EU accession, explicitly stipulating its purpose to harmonise Cypriot law with the Directive (Law 70(I)2002 (7 June 2002) amending the law on Termination of Employment, published in Cyprus Official Gazette 3610 on 07 June 2002 effective 01 January 2003). Some important issues relating to the transposition and implementation of FT Law in Cyprus have been raised in expert literature on the subject (N. Trimikliniotis and C Demetriou, National Expert Report on Directive 1999/70/EC concerning the Framework Agreement on fixed-term work concluded by UNICE, CEEP and ETUC, Studies on the implementation of Labour Law Directives in the enlarged European Union', 2006, on behalf of human European consultancy, Hooghiemstraplein 155, 3514 AZ Utrecht, the Netherlands, funded by the EU Commission). The purposes contained in Clause 1 of the Framework Agreement are repeated verbatim in Section 3 of FT Law. Section 2 of the FT Law defines 'fixed-term worker' as a person who has entered into an employment contract or relationship directly with an employer, under which the end of the employment contract or relationship is determined by an objective condition such as the reaching of a specific date, completion of a specific task, or the occurrence of a specific event. Section 2 of the FT Law defines the term 'comparable employee with work of indefinite duration' as a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. The wording of Clause 3.2 of the Framework Agreement is copied verbatim. No minimum period of continuous employment is required to be entitled to the protections under the FT Law.

Section 5(3) of the FT Law copies the text of Clause 4.4 of the Framework Agreement verbatim; 'objective grounds' is defined in Section 7(2) of the FT Law (transposing Directive Clause 5 of the Framework Agreement with reference to the measures preventing abuse). Section 7(2) provides that objective grounds exist *especially* where:

- The needs of the undertaking with regard to the execution of a particular task are temporary;
- The employee is replacing another employee;
- The special nature of the work that must be carried out justifies the fixed-term duration of the contract;
- The employee is employed on probation (the concept of 'probation' is found in the Termination of Employment Law);
- The employment on the basis of a fixed-term contract is in pursuance of a court decision;
- The employment on the basis of a fixed-term contract concerns employment in the National Guard of the Republic of Cyprus, volunteers with a five-year obligation (the employment of National Guard volunteers (the precise term used is 'volunteers of a five-year service') is covered by a special scheme regulating the service of these individuals in the Army for a period of five years, because conscription to the Cypriot Army is otherwise obligatory for a term of two years (approximately), with the exception of a few permanent posts. These persons are highly qualified professionals and have been trained in operating advanced technology weapons, which is why they are given a five-year contract of service, presumably in an effort to allow flexibility for the government to review the situation every five years and decide according to the circumstances as to whether their services are needed or not. There were media reports in early 2006 about these employees protesting against abuse of their position by the government).

The use of the word 'especially' in the opening excerpt of this section implies that the above list is not exhaustive.

The RoC regulates fixed-term workers employed in the public sector, applying private law. This means that such workers are employed in the public sector but their rights are regulated by private law. One such worker claimed that she should be entitled to the same rights as public sector employees to preclude the possibility of discrimination. However, the Supreme Court rejected an appeal against the first instance decision of the Labour Disputes Court on the termination of her employment relationship (*Christina Laouta v The Republic of Cyprus through the Attorney General*, 14 October 2014). The appellant was initially hired by the government as a legal officer in May 2004, on the basis of a contract ending in December 2004. Thereafter, successive contracts with 15-day durations were concluded until 23 April 2005, upon which a new contract was concluded until 31 December 2006. On 04 December 2006, the government informed the appellant that her employment contract would be converted into one of indefinite duration as of 01 December 2006, because she had completed 30 months of employment as envisaged in the FT Law. In May 2007, the government informed the appellant that her services were being terminated because the Public Service Commission had appointed another person in the permanent post of legal officer, a position the appellant had unsuccessfully applied for. The appellant rejected the amount offered to her as compensation for the termination of her contract and applied to the Labour Disputes Tribunal, claiming both higher compensation and reinstatement in her position. The Labour Disputes Court decided that the termination of the appellant's services was unlawful under the Law on Termination of Employment (Law 24/2967) and ruled in her favour for compensation in the amount of EUR 3.610. Through this appeal, the appellant sought to challenge the Labour Disputes Court's decision for having established her dismissal as unlawful without accepting that there was bad faith on the part of the employer, as she was dismissed whilst being pregnant. At the same time, she appealed against the Labour Disputes Court's failure to consider her a government employee, arguing that the FT law required a restrictive interpretation of the terms 'indefinite duration' and 'permanent' to safeguard equal treatment between employees of indefinite duration and permanent employees. The Appeal Court rejected this

argument, stating that the differentiation between a permanent public employee and a temporary employee with a fixed-term contract or a contract of indefinite duration cannot be abolished, since the employment of the latter is not based on the Constitution or on the Public Service Law of 1/90. The Supreme Court rejected the allegation of bad faith on the part of the employer, which could have justified reinstatement of the appellant to her prior position on the ground that the repeatedly concluded employment contract between the parties explicitly provided that the appellant's employment would continue until her permanent appointment in the specific position, and that the appellant herself had recognised the legitimacy of this procedure by filing an application for the permanent position of her post. The appellant's argument that the compensation awarded to her by the Labour Disputes Court was too low was also rejected by the Supreme Court, which found the compensation to be adequate, given that the aggravating circumstances invoked by the appellant had not been proven.

In case *Maria Syrimi V Cyprus Republic* (Case No 338/2012, 30 June 2015, Nicosia Labour Disputes Court) the Labour Disputes Court decided that the contract of a research assistant in the Statistics Services, who had been employed on successive fixed-term contracts since 2007, was automatically converted into a contract of indefinite duration based on the Cypriot law transposing the FT Law. Whilst the decisions of the Labour Disputes Court are not binding on superior courts, it is noteworthy that the government decided to not appeal against the decision, which confirms the basic principle that transposes the Fixed-term Directive. This is a practice extensively used both in the public and the private sector. This issue was taken up by the Pancyprian Union of Nurses (PA.SY.NO), which held a one-day warning strike and raised, inter alia, demands related to the fact that the practice of renewing consecutive fixed-term contracts continues in the public sector without these contracts being converted into contracts of indefinite duration.

A specific subcategory of workers is employed in the public sector on an hourly basis. The Supreme Court ruled that a person employed in the public sector on an hourly basis does not meet the requirements to be considered as being engaged in 'public service' (see: *Demetris Tita v. The Republic of Cyprus through the Minister of Finance and the Department of Public Administration and Personnel,* Case No 32/2010, judgement delivered on 21 September 2012).

The Court ruled that the claimant had been working at the state TV Channel CyBC between 2003–2009 as an hourly 'Associate', with a salary at the A6 salary scale. In 2009, he was appointed 'Inspector' at the Ministry of Labour at the A5 salary scale. The claimant sought to reverse the decision of the respondents to place him on an A5 salary scale, claiming that he had the right to maintain the A6 salary scale position he held when he was working as an hourly Associate at CyBC. He based his claim on the argument that his service at CyBC fell within the definition of 'public service', which entitled him to retain the salary scale he had held when working at CyBC. The Supreme Court found that the claimant's service at CyBC between 2003 and 2009 did not fall within the definition of 'public service', and that he was therefore not entitled to retain the equivalent salary scale. The reasoning was because he had been an hourly tenured Assistant Engineer at CyBC, and his wages had been calculated on the basis of the number of hours worked. The Public Service Law (Article 2 of Law No. 1/90) expressly excludes services rendered by persons whose remuneration is calculated on a daily basis or services by persons hired on a temporary basis in accordance with the Law on the Hiring of Temporary Employees from the definition of 'civil service'. In interpreting this provision, the Court referred to Cypriot legal precedent (see: *Michael v. Republic* (1984) 3 C.L.R. 769) which establishes that 'by virtue of this definition, service by persons whose remuneration is calculated on a daily basis is not considered as a public service […]. The Law as such leaves no room to consider employment on a daily basis as service'. The claimant's application to set aside the respondent's decision to place him on an A5 salary scale was thus rejected.

4 Other Relevant Information

Nothing to report.

Czech Republic

Summary

(I) The Chamber of Deputies is discussing a draft amendment to the Labour Code, which introduces an indexation mechanism for setting the minimum wage.

(II) The Ministry of Labour and Social Affairs has submitted a draft amendment to the Labour Code for inter-ministerial comments. The amendment's objective is to enhance the flexibility of the labour market, as well as the performance of work within employment relationships, both in terms of termination of the employment contract and working conditions.

(III) The Supreme Court of the Czech Republic has issued a decision setting out the interpretative aspects of the transfer of a fixed-term employment contract into one of indefinite duration on the basis of the continuation of work with the employer's knowledge.

1 National Legislation

1.1 Amendment containing a minimum wage indexation mechanism

The amendment containing the mechanism of minimum wage indexation is before the second reading in the Chamber of Deputies (Chamber of Deputies print 663). The second reading will take place in the week of 10 June 2024. Thereafter, it will no longer be possible to change the content of the amendment in the Chamber of Deputies. Amendments can be made until that date. One of these amendments will be the postponement of the amendment's effective date, which was 01 July 2024. The expected date of entry into force will be 01 August 2024 at the earliest.

As mentioned in the April 2024 Flash Report, the amendment includes a mechanism for the indexation of minimum wage, abolishes the guaranteed wage in the private sector, addresses the conclusion of collective agreements for employers with multiple trade unions and abolishes the obligation for employers to create a holiday schedule.

1.2 Amendment to the Labour Code to enhance flexibility

On 29 May 2024, the inter-ministerial comment procedure on the legislative draft amendment to the Labour Code came to an end. The Ministry of Labour and Social Affairs will review the comments and submit the proposal to the Government of the Czech Republic for approval. The aim of the amendment is to enhance the flexibility of the labour market and the performance of work within an employment relationship. The amendment thus strengthens flexibility in the establishment and termination of employment relationships. A greater degree of contractual freedom will also apply to working conditions.

2 Court Rulings

2.1 Fixed-term contract

The Supreme Court, 21 Cdo 2950/2023, 30 April 2024

The Supreme Court decision in the present case concerned the interpretation and application of the provisions of section 65 (2) LC, which provides that if, after the expiry of the agreed duration of the employment relationship, the employee continues to perform work with the employer's knowledge, the employment relationship is deemed to be a fixed-term employment relationship.

The Supreme Court has confirmed that a conversion (transformation) of an employment relationship from a fixed term into one of indefinite duration under the provisions of section 65(2) LC arises if two conditions are met. First, if the employee continues to perform the work after the expiry of the agreed period, and second, if the employer is aware of this fact. The performance of work within the meaning of section 65(2) LC means the performance of any type of work, i.e. not only work that the employee performed for the employer prior to the expiry of the agreed period of employment, but also the performance of work other than that which he or she had performed previously, even work of a different kind than that which he or she was to perform under the employment contract. The employee performs work with the employer's knowledge if the employer knows (has been informed) of the continuation of work without preventing him or her from doing so; in other words, it is not sufficient for the employer to take a position on the continuation of the employee's work without informing others, i.e. the employer must explicitly express any disagreement to the continuation of work, otherwise it must be concluded that the employee continues to work 'with the employer's knowledge'. If both of these conditions are met, a fiction (i.e. a change in the content of the employment relationship) arises and the employment relationship is converted into one of indefinite duration.

For the concept 'with the knowledge of the employer' to be met, it suffices if the work is being performed even with the knowledge of the employee's immediate superior or with the knowledge of another natural person who is not in an employment relationship with the employer but acts on behalf of the employer as its representative on the basis of a power of attorney agreement. Conversely, an employment relationship cannot be considered to be one of indefinite duration if the employee continues to perform work even though the employer has expressly prohibited the employee from continuing to work or has otherwise given the employee an unmistakable indication that he or she does not consent to the employee's continued performance of work, and the same conclusion will have to be reached if the employer has not manifested its disapproval of the continued performance of work (has consented to the performance of further work) as a result of a mistake on the part of the employee (e.g. the conversion (transformation) of a fixed-term employment relationship into one of indefinite duration is excluded where the fiction of a change in the content of the employment relationship arises, as provided for in section 65(2) LC, would be contrary to the expressed will of the parties to the employment relationship.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

According to Czech labour law, it is not possible to conclude an employment relationship under a 'non-permanent contract of indefinite duration'. The employment relationship is either agreed for a fixed term if its duration is agreed, otherwise it is agreed for an indefinite period. According to section 39 LC, the negotiation of a fixed-term employment relationship is limited to a maximum duration and a maximum number of repetitions. This is the transposition of Directive 1999/70/EC.

As regards the members of the security forces, a fixed-term contract can only be concluded until the successful completion of a service test (Article 11(1) of Act No. 361/2003 Coll., on members of the security forces).

As regards professional soldiers, a service contract may be concluded for a period of 20 years. The duration of the service relationship may only be shortened by the service authority at the request of the soldier for serious personal or social reasons, which include, in particular, the provision of personal care for a person under the age of ten years who is dependent on the assistance of another person in Grade I, or for a person

who is dependent on the assistance of another person in Grade II to IV according to the Social Services Act, if he or she lives in a common household with the soldier and cannot be provided with such care by another member of the soldier's family; the condition of a common household is not required if the person is a close relative (§ 5(4)) 221/1999 Coll., on professional soldiers)

On the basis of the above, the CJEU decision does not seem to have any direct implications for Czech labour law. However, an exception may be Act No. 234/2014 Coll., on the Civil Service, which regulates the employment relationships of civil servants who perform administrative activities for the State.

As regards the service relationship of civil servants (officials), the conclusion of fixed-term service relationships are preferred. A civil servant may only be engaged under an a service contract of indefinite duration if he or she has passed the civil servant's examination or only for the duration of the temporary absence of a civil servant. However, other grounds may be specified in a government regulation (based on the statutory authorisation established in section 21 of Act No. 234/2014 Coll., on the Civil Service).

Section 3 of Government Decree No. 137/2015 Coll., provides that a civil servant (official) may be recruited under a fixed-term contract:

1. for the fulfilment of a time-limited assignment in the civil servant's office, for the duration of the assignment, but for no longer than seven years, which may be extended with the employee's consent;

2. where it is necessary to ensure the performance of a task on behalf of a civil servant who has been granted a reduced period of service, for the duration of that reduced period;

3. if that person is to be posted to perform foreign service for a period not exceeding five years, which may be extended for a further five years with the agreement of the employee.

In general, the duration of a service relationship is limited by objective grounds defined in legislation as well as by the total duration of such a relationship. However, in such cases, the duration of the fixed-term contract may be extended successively with the agreement of the employee.

It will be for the courts to determine the compatibility of the abovementioned government regulation with the CJEU's decision in each individual case. The reasons for concluding a fixed-term contracts set out in points 1 and 2 above may be too broad in view of the meaning and purpose of Clause 5 of the Directive.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

A recent industrial arbitration ruling concerned the duty to relocate fixed-term workers in case of imminent dismissal for organisational reasons. The ruling confirms that a public employer is under no obligation to relocate a fixed-term worker to a permanent position in case of imminent dismissal.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Dismissal of a Fixed-Term Worker

Industrial arbitration ruling, FV 2023.775, 14 May 2024

The case dealt with the question whether the Copenhagen Municipality (public employer) was required to relocate a fixed-term worker, whose dismissal was imminent due to organisational reasons (budgetary concerns) to an available permanent position within the municipality.

In the Danish public sector, employers are required to select the most qualified candidate, a principle that is essential for maintaining objectivity and ensuring optimal public administration. To achieve this, all public sector vacancies must be publicly advertised and must be made available to all applicants, with a view to attracting as many qualified candidates as possible.

In the Copenhagen Municipality, vacancies for a fixed term of up to nine months were exempt from being publicly announced. This, in practice, meant that most fixed-term workers were employed without the publication of a public vacancy announcement and which was not subject to the same qualification standards (as permanent positions).

The trade union of two fixed-term employees, who for organisational reasons had been dismissed before the expiry of their contracts, claimed that the municipality's practice contravened section 4 of the Municipal Framework Agreement on Fixed-term Work, which transposes Article 4 on non-discrimination of Directive 1999/70/EC. The municipality argued that the duty to relocate was an employment condition under section 4, and that the practice of not relocating fixed-term workers to permanent positions amounted to differential treatment of fixed-term workers.

The industrial arbitrator determined that a duty to relocate a fixed-term worker to an available, permanent position in the municipality would be more favourable treatment than that agreed at the commencement of the fixed-term contract between the municipality and the fixed-term worker, and more favourable than the fixed-term worker could reasonably have expected. Relocation would fall outside the agreement's original framework and outside the municipality's obligations.

The arbitrator also found that such a duty to relocate would have consequences for the municipality's possibilities for attracting external candidates with better qualifications through a public vacancy announcement.

The arbitrator added that the fixed-term worker was entitled to information on any available permanent positions, cf. section 7 of the Framework Agreement, and could apply for the position just like any other candidate.

In conclusion, the municipality's practice of relocation did not contravene the non-discrimination clause in section 4 of the Framework Agreement on Fixed-term Work.

The duty to relocate a fixed-term employee in case of dismissal for organisational reasons is part of the Danish dismissal protection. This duty has been subject to a number of judicial proceedings in recent years, especially in the public sector. This ruling clarifies the scope of the duty to relocate fixed-term workers employed in the public sector.

The outcome of the case is not surprising, as the mechanism for granting a fixed-term worker a permanent contract in case of imminent termination of the contract before the expiry of the fixed-term contract is not provided for in Danish law. There are no prior examples of this mechanism, and this interpretation would go beyond the parties' original contractual agreement to the detriment of the employer. The ruling must be considered in line with EU law and the Framework Agreement on Fixed-term Work.

The arbitrator also emphasised the special public sector rules on public vacancy announcements and the duty to employ the most qualified candidate. These rules would not be necessary to reach the same conclusion as that mentioned above.

Link to Act on Fixed-term Work, No. 907 of 11 September 2008 is available here.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The cases concerned Spanish workers who were employed under so-called 'non-permanent contracts of indefinite duration' in the public sector. The CJEU found, first, that the workers must be considered fixed-term workers within the meaning of the Framework Agreement on Fixed-term Work annexed to Directive 1999/70/EC. The workers therefore fell within the scope of that Directive.

The relevant workers had been employed under this type of employment contract for many years (20 and 27 years, respectively) and were automatically extended, when the deadline for initiating the selection procedure had been reached. Determining the delineation of 'successive' fixed-term employment contracts or relationships generally falls withing the responsibilities of Member States and/or social partners. There is a broad margin of appreciation, in particular as regards a key concept that is crucial to the scope of protection. The CJEU has clarified that automatic extensions of temporary contracts can be treated like renewals. The phrase 'use of successive fixed-term employment contracts or relationships' in the EU Directive includes a situation where, due to the failure of the administration to organise a selection procedure within the specified deadline to definitively fill the post occupied by a worker who holds a non-permanent contract of indefinite duration, the worker's temporary contract with said administration is automatically extended. Moreover, the case concerned the interpretation of Member States' obligation to prevent abuse of non-permanent contracts of indefinite duration.

The CJEU found that Spanish law neither provided for any of the measures referred to in the EU Directive on Fixed-term Work, nor did Spanish law contain an 'equivalent legal measure' to prevent abuse of fixed-term employment contracts.

There is no comparable type of employment contract under Danish law, neither in practice nor in case law. Furthermore, there is no incentive for employers under Danish law to use similar employment conditions as in the Spanish case, i.e. to use long-term non-permanent contracts of employment.

The Danish flexicurity system allows for the dismissal of a worker with a notice period of, e.g. three months, for organisational reasons, depending on the duration of the worker's employment contract. The procedure for dismissal is relatively straightforward. Should the dismissal be challenged in legal proceedings, it is not automatically suspended. A dismissal will, as a rule, be deemed a fair dismissal, if legitimate business reasons can be substantiated before court.

Moreover, in the Danish public sector, vacancies must generally be made publicly available to attract a range of qualified candidates. There is no procedure for postponing the selection procedure for vacancies in the public sector. Only short-term positions, such as substitutions of employees who are on parental leave, are exempt from the requirement to publicly announce the vacancy. All public employers are subject to this requirement and must comply with the specified procedures. There are only very few examples of a person being employed without the duty of publicly announcing the vacancy.

Directive 1999/70/EC has been transposed by the Act on Fixed-term Work (Act No. 907 of 11 September 2008) and a number of collective agreements. In the Danish public sector, fixed-term employment is generally limited and is typically only used for a short time.

In conclusion, the recent CJEU ruling in cases C-59/22, C-110/22 and C-159/22 does not have any implications for Danish law, as there are no similar or comparable employment contracts as in the case of Spain.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

(I) According to amendments to labour legislation, working during sick leave will be possible. This option will be possible after 60 days of sick leave.

(II) Employers' associations do not support the proposal for a directive on traineeship conditions. In Estonia, the conditions for traineeships are quite flexible and are convenient for both employers and trainees.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The CJEU's judgment will have implications for Estonian legislation, as it establishes several important aspects of fixed-term employment relationships.

According to Estonian labour law, fixed-term employment contracts can only be concluded with employees in specific cases. The possibilities to conclude fixed-term employment contracts are regulated in ECA (the Employment Contracts Act, which is available here), sections 9 and 10.

Section 10 contains restrictions for concluding a fixed-term employment contract and under what circumstances such contracts will be deemed employment contracts of indefinite duration. The following cases are regulated in this provision:

If an employee and employer have,

1) on more than two consecutive occasions, entered into an employment contract for a fixed term for the performance of similar type of work;

2) extended the fixed-term contract term more than once within five years,

the employment relationship is deemed to have been entered into for an unspecified term from the beginning.

The conclusion of a fixed-term employment contract is considered to be consecutive if the period between the expiry of one fixed-term employment contract and the entry into the next one is less than two months.

If the employee continues to work after the expiry of the fixed-term employment contract, the fixed-term employment relationship converts into an open-ended employment relationship.

If the employment contract has been concluded for a fixed term in violation of the provisions of the Employment Contracts Act, the employee can claim financial compensation for the illegal termination of the employment contract. The Estonian Employment Contracts Act does not provide for a specific upper or lower limit in financial

compensation if the rules for concluding a fixed-term employment contract have been violated.

The fixed-term service relationship of civil servants (public service) is regulated in the Civil Service Act. Public servants are not subject to the regulation specified in ECA. They are appointed through an administrative act for a fixed term to replace a temporarily absent civil servant or to perform a fixed-term assignment. If the service relationship has been terminated illegally following the expiration of the term, the civil servant can dispute the termination of the service relationship and claim compensation in the amount of three months' average salary. The court can change this amount (increase or decrease the amount of compensation) depending on the circumstances of the service provided.

Considering the above, the CJEU's decision has significant implications. The judgment clarifies the concepts and content of fixed-term employment relationships and establishes adequate measures to protect the rights of employees in the event of termination of a fixed-term employment relationship.

The amount of compensation that must be paid to a civil servant could be considered problematic if his/her service relationship has been concluded for a fixed term in violation of the requirements of the law. The limitation to three-months' average salary stipulated in the Public Service Act may not be in line with the Directive's requirements.

4 Other Relevant Information

4.1 Working during sick leave

The amendments to the Occupational Health and Safety Act came into effect in May. Accordingly, an employee can work following a sick leave period of 60 days upon concluding an agreement with the employer. Moreover, the employer must now comply with the notice period for terminating the employment contract, if the reason for the termination is a decrease in the employee's capacity for work due to a health condition.

Upon concluding a written agreement with the employer following a sick leave period of two months, the employee will be allowed to work during his/her sick leave under working conditions that are adapted to his/her health condition, i.e. the employee may only perform work that corresponds to his/her health condition. In case an employee temporarily performs work that corresponds to his/her health condition during sick leave, the employer and employee are required to comply with the working conditions that correspond to the health condition indicated in the employee's sick leave certificate. Health-related work can mean part-time work, adapted working conditions/work environment as well as lighter tasks. If the employer is unable to offer the employee working conditions that correspond to the employee's health condition, the employee may not work during his/ her sick leave period.

Employees have the opportunity to work while on sick leave after a 60-day sick leave period. In addition, the exemption from work duties must last at least 90 calendar days. Since working during sick leave is possible after a 60-day sick leave period, which means that the sick leave must be valid for at least 30 days thereafter.

In addition, the employer may not pay less than 50 per cent of the salary agreed in the employment contract for working during sick leave. This means that the employee's salary must in any case be at least 50 per cent of his/her previous salary. The health fund compensates the insured person for the remaining part of his/her salary, which can amount to a maximum of 50 per cent of the previous salary.

According to the amendments, the employer must comply with the notice period for the termination of employment contracts, if the reason for the termination is a decrease in the employee's capacity for work due to a health condition. The current legislation states that the employment contract may be terminated without observing the notice period

if, taking all of the circumstances and the interests of both parties into account, it is not reasonable to demand the continuation of the contract until the end of the agreed term or notice period.

4.2 Traineeship directive

The European Commission has drawn up a directive that aims to improve the working conditions of trainees and fight situations in which regular employment relationships are presented as internships. According to the Chamber of Commerce, the problems regulated by the trainees' contract are not relevant for Estonia, and over-regulation of traineeships may reduce employers' desire to offer training to young people.

In Estonia, employment relationships are not concealed behind traineeship contracts.

According to the planned directive, regular employment relationships may not be concealed behind a traineeship contract, and Member States must ensure implementation of control and inspection measures to detect and fight activities carried out under a regular employment relationship is disguised as an traineeship. According to the Chamber of Commerce, no significant problem has arisen in Estonia where a regular employment relationship is concealed behind a traineeship contract. In Estonia, traineeships are primarily used in addition to vocational training to gain first professional experiences, and in the case of an employment relationship, a probationary period regulated in the Employment Contracts Act can be used. Even if the parties have concluded a traineeship contract, which in its content corresponds to a regular employment relationship, the trainee has the opportunity in Estonia to appeal to the labour dispute committee or the court. In addition, the trainee always has the opportunity to contact the labour inspectorate for help.

If the planned directive enters into force, employers might be discouraged from offering traineeship opportunities and, if necessary, may have to be able to prove that the trainee does not have the same obligations as other employees. If a trainee works less intensively than a regular employee, the question also arises whether and to what extent the trainee must be paid according to his/her contribution. In any case, a trainee is a cost to the employer, but companies still offer such opportunities to train the future workforce . If the requirements for a traineeship are too stringent, including payment requirements, employers may offer fewer traineeship opportunities, which in turn will inhibit the development of young people and the training of the future workforce. According to the Chamber of Commerce, the directive may prevent the approach pursued in Estonia to date, according to which companies offer traineeships to young people of their own free will to train them and offer them initial professional experience.

Finland

Summary

(I) Amendments to the industrial peace legislation entered into force on 18 May 2024. Improving industrial peace is one of the objectives of the government's labour market reforms. Compensatory fines for violating industrial peace have been increased, disproportionate solidarity action has been limited and the duration of political strikes restricted.

(II) The Ministry of Social Affairs and Health has appointed a tripartite working group whose, task is to prepare a proposal for the national implementation of the Pay Transparency Directive.

1 National Legislation

1.1 Amendments to industrial peace legislation entered into force

The amendments to the industrial peace legislation entered into force on 18 May 2024. Improving industrial peace is one of the objectives of the government's labour market reforms. Compensatory fines for violating industrial peace have been increased, disproportionate solidarity action has been limited and the duration of political strikes restricted.

According to the new provisions, an employee who continues a work stoppage which the court has found to be unlawful and who is aware of this judgment can be ordered to pay a compensation of EUR 200. The provisions were specified by Parliament to obligate the employer to inform the employee in writing that the court has found the work stoppage to be unlawful. The employer is allowed to deduct the compensation from the employee's salary only with the employee's express consent. Otherwise, such a deduction requires the employee, by final judgment, to have already been ordered to pay the compensation.

The duration of political work stoppages was limited to a maximum of 24 hours and the duration of other industrial actions to a maximum of two weeks. Parliament has specified the provisions by adding a one-year time limit. Any political industrial action taken previously cannot be repeated within one year of the start of the original industrial action to achieve the same objective.

The obligation to notify about industrial action was extended to solidarity action and political industrial action organised in the form of work stoppages. Those organising solidarity action or political industrial action in the form of a work stoppage must announce it no later than seven days before its start.

In the case of solidarity action, the notification must be submitted to the employer and the party to the collective agreement that is subject to the industrial action. In the case of political industrial action, when industrial peace is in force, the party to the collective agreement must be notified. Parliament has specified that the National Conciliator's Office must also be notified of any political industrial action or solidarity action.

1.2 Working group to prepare implementation of the Pay Transparency Directive

The Ministry of Social Affairs and Health has appointed a tripartite working group whose task is to prepare a proposal for the national implementation of the Pay Transparency Directive. The term of office of the working group ends on 31 March 2025.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

According to the Employment Contracts Act (Työsopimuslaki, 55/2001), it is prohibited to use consecutive fixed-term contracts when the amount or total duration of fixed-term contracts or the totality of such contracts indicates a permanent need of labour. The CJEU judgment contains clarifications concerning the Directive according to which the legislation must be interpreted.

4 Other Relevant Information

4.1 Study on the economic implications of the legal status of wild-berry pickers

The Study on Wild-Berry Picking Assessing the Economic Impacts of Employment and Self-employment among Foreign Wild-Berry Pickers (Publications of the Ministry of Economic Affairs and Employment 2024:19) assessed the economic implications of foreign berry pickers working either as seasonal employees or as independent entrepreneurs in the wild-berry sector in Finland. According to the study, the entry of foreign berry pickers into employment contracts for seasonal work appears to be a more realistic option than operating as independent entrepreneurs. In practice, foreign berry pickers would not have the means to fulfil the legal obligations of entrepreneurship. Tightening the legal regulations is justified to minimise shortcomings in the wild-berry sector. In an employment relationship, foreign berry pickers would be required to pay taxes on their income, but it was not anticipated that income taxation would affect incentives for picking. Employment status would not eliminate the problem of foreign pickers accumulating debt in their home countries due to travel expenses. According to the study, transitioning to employment relationships would significantly increase labour costs for wild-berry companies, potentially causing financial challenges for some businesses.

France

Summary

(I) The death of an employee from a heart attack at home during her working hours, constitutes an accident at work when the employer cannot produce any evidence to rebut this presumption.

(II) Not being in the same situation as the employee who had to work on site, deprived of the company's catering services due to the COVID-19 pandemic, the teleworker was not entitled to the 'closed canteen' allowance paid to those working on site.

(III) An employee who claims that his or her dismissal for incapacity for work was discriminatory on the grounds that the employer had failed to take the employee's status as a disabled worker into account and the guarantees that go with it, must follow the evidentiary procedure applicable to discrimination.

(IV) The Court of Cassation has issued two clarifications concerning the minimum duration of part-time work. On the one hand, it has clarified the penalty applicable to contracts that provide for irregular working hours that are shorter than those stipulated by law. Secondly, it clarifies the application of this minimum working time to students from third countries.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Recognition of an accident at work while teleworking

Nimes Appeal Court, No. 23/00507, 02 May 2024

On 02 July 2020, an employee working as an accountant passed away at home following a cardiac arrest. The employee was teleworking when she collapsed at 3:18 pm. The employer contested the decision of the Local Sickness Insurance Fund of Gard, which had ruled that the accident had been work-related.

The employer asserted that the accident that had occurred at the employee's home was unrelated to the performance of her work and therefore did not constitute an accident at work. Specifically, he argued that the employee had been suffering from serious health problems and that she had only worked in the mornings.

He maintained that

> *"the employee had finished working at the time of her death and was at home in a private capacity", and that "at the time of her death, she was no longer in a subordinate position on his behalf".*

The lower court ruled in favour of the Local Sickness Insurance Fund. It pointed out that under the terms of Article L.411-1 of the French Social Security Code,

> *"an accident at work, whatever its cause, is deemed to be any accident occurring as a result of or in the course of work to any person employed or working, in any capacity or in any place whatsoever, for one or more employers or company managers [...]. This presumption is only withdrawn if the employer establishes that the cause of the accident is entirely unrelated to work".*

The court went on to point out that

> *"according to Article 21 of Ordinance No. 2017-1387 of 22 September 2017, relating to the predictability and security of labour relationships, an accident that occurs at the place where teleworking is* carried out *and during the performance of the teleworker's professional activity is presumed to be an accident at work within the meaning of the provisions of Article L.411-1 of the Social Security Code".*

The judges noted that the occupational accident declaration drawn up by the employer on 02 July 2020 mentioned the occurrence of an accident suffered by the employee on 02 July 2020 at her home, corresponding to her "*occasional place of work*", and that at the time of the accident, the employee was "*engaging in bookkeeping at home*". Finally, the declaration states the employee's working hours on the day of the accident as: "*8:30 a.m. to 12:00 p.m. and 2:00 p.m. to 5:30 p.m*.".

In addition, the company's manager had been contacted by telephone and had indicated that he confirmed all the information contained in the accident report drawn up by the chartered accountant on 03 July 2020.

Accordingly, the judges concluded,

> *"the argument that it had been agreed that the employee would work from home only in the mornings is objectionable and is contradicted by the information contained in the work accident declaration, which was confirmed by the company's manager during a telephone conversation with a sworn officer of the Local Sickness Insurance Fund".*

Furthermore,

> *"the company that invokes the employee's fragile state of health, in particular respiratory problems, does not demonstrate that her death resulted from a cause entirely unrelated to work".*

The employee's accident is therefore presumed to have been caused by work, and

> *"the company has not produced any evidence that could usefully rebut this presumption".*

2.2 Difference in treatment between on-site employees and teleworkers

Social Division, Court of Cassation, No. 22-18.031, 24 April 2024

Due to the COVID-19 pandemic, a company operating in and managing the French public electricity distribution network, implemented a business continuity plan in March 2020, including:

- Setting up minimum services provided by field operatives for activities strictly necessary to maintain the continuity of electricity supply and the safety of goods and people;
- Placement of remote agents for activities that can be carried out by employees from home using the tools at their disposal.

Subsequently, a collective agreement signed on 12 June 2020 and applicable until 31 December 2020 provided for a 'closed canteen allowance' for employees who usually had lunch at an outside restaurant. According to the agreement, employees were

entitled to this allowance when no alternative catering solution could be provided. This allowance was also paid by the employer to employees working on site when the canteen was closed and there was no possibility of ordering meals or having them delivered between 17 March 2020 and from 01 January 2021.

Believing that this indemnity should also be paid to telecommuting employees, a trade union brought an action before the summary proceedings panel of a judicial court, requesting it to order the company to pay the 'closed canteen indemnity' to all company employees who had no choice but to work remotely due to the pandemic for each day worked after 16 March 2020.

Dismissed by the Court of Appeal, the union appealed to the Court of Cassation. Firstly, it argued that the principle of equal treatment between employees working on the company's premises and teleworkers, who were entitled to the same rights under Article L. 1222-9 of the French Labour Code, had been violated. As a result, teleworkers must be considered as performing their work on the company's premises for the purpose of determining their rights. In addition, teleworkers, like employees who worked on site where the canteen is closed, were deprived of access to the canteen by virtue of their teleworking position and were therefore in an identical position as employees with regard to the respective benefit, without the difference in treatment being justified by any objective and relevant reason.

The French Supreme Court disagreed. According to the high court, since the purpose of the 'closed canteen' allowance had been to compensate for the loss of the company catering services offered to employees present on company sites as a result of the pandemic, telecommuting employees were not in the same situation as those who, having to work on site, were deprived of this service. Consequently, telecommuters were not entitled to the payment of the allowance.

Secondly, the union contended that telecommuting had entailed an additional financial burden for employees requested to telecommute by their employer due to the pandemic, whereas according to Article L. 4122-2 of the French Labour Code, measures taken in the field of health and safety at work should not entail any financial burden for them. The French Supreme Court rejected this argument as well. In its view, since telecommuting employees are not required to use the company canteen, the administrative closure of the latter due to the pandemic did not entail any additional financial burden for them.

2.3 Clarification of the evidentiary regime for discrimination on the grounds of disability

Social Division, Court of Cassation, No. 22-11.652, 15 May 2024

The status of disabled workers imposes a specific obligation on the employer, requiring it to take 'appropriate measures' to enable the worker to retain his or her job, as long as the resulting costs are not disproportionate. Refusal to take such measures "*may constitute discrimination*" (see Article L. 5213-6 of the French Labour Code).

The case concerned an employee who was recognised as a disabled worker on 01 April 2010. Employed since 14 April with a new employer, she was off work from October 2010 to August 2015, before being declared incapacitated for work by the occupational doctor in September 2015. The employer subsequently dismissed her for incapacity and inability to redeploy the employee in another post by letter dated 09 November 2015.

Arguing that the employer should have taken into account her status as a disabled worker and should have adopted one of the measures provided for in Article L. 5213-6 of the French Labour Code, without however specifying which ones, the interested party claimed that her dismissal was null and void on the grounds of discrimination based on disability. The Court of Appeal ruled in her favour on the sole ground that the company, with over 5 000 employees, had failed to meet its obligations under Article L. 5213-6,

since it had not taken into account the employee's status and had not offered her any specific measures in its search for a new job.

This reasoning was challenged by the employer, who appealed to the Court of Cassation, arguing that only a refusal to take appropriate measures constituted discrimination on the grounds of disability. In this case, however, the Court of Appeal had only noted an 'omission'.

In its ruling of 15 May, the Court of Cassation censured the appeal decision, considering that

> *"it was up to the judge to apply the provisions of Article L. 1134-1 of the French Labour Code", i.e. the shared proof mechanism specific to discrimination.*

The Social Chamber thus laid down the principle that

> *"when a judge deals with a case of discrimination on the grounds of disability, it must first be investigated whether the employee has provided factual evidence suggesting the existence of such discrimination".*

It specified that such evidence may be presented by:

- the employer's refusal, even implicit, to take concrete and appropriate measures for reasonable accommodation, where applicable, requested by the employee or recommended by the occupational doctor or the social and economic committee as part of its consultative powers (see Articles L. 1226-10 and L. 2312-9 of the French Labour Code);
- or "*its refusal to accede to the employee's request to refer the matter to an organisation assisting the employment of disabled workers to seek such measures*".

Only then will the judge be required to

> *"investigate whether the employer has demonstrated that its refusal to take these measures is justified by objective factors unrelated to any discrimination on grounds of disability, such as the material impossibility of taking the necessary or recommended measures, or the disproportionate nature for the company of the burdens resulting from their implementation".*

The Court of Appeal's decision was therefore censured for failing to follow this evidentiary method specific to discrimination.

2.4 Minimum working time under a part-time contract

Social Division, Court of Cassation, No. 22-11.623, 22 May 2024

The minimum working hours of part-time employees are governed in Articles L. 3123-7, L. 3123-19 and L. 3123-27 of the French Labour Code. According to these articles, the minimum work week is set at 24 hours, or, where applicable, the equivalent of this amount calculated over the month or period determined by collective agreement on the organisation of working hours. By way of derogation, however, a shorter work week may be:

- Under certain conditions, provided for in a collective agreement or an industry-wide agreement;
- Requested by employees wishing to benefit from the gradual retirement scheme, to combine several jobs to reach an overall working time

corresponding to full-time work or at least 24 hours a week (or the equivalent of this), or to cope with personal constraints;

- Granted as a right, upon request, to employees under the age of 26 who are pursuing their studies.

Article R. 5221-26 of the French Labour Code provides that third-country workers who possess a residence permit or visa for a stay of more than three months and is a 'student' are authorised to engage in paid employment on an ancillary basis, up to a maximum annual working time of 964 hours (18 hours per week).

The French Labour Code does not specify the penalty to be applied to part-time employment contracts providing for a work week of less than 24 hours. The Social Division of the French Supreme Court responded to this absence in its ruling of 22 May 2024.

In the present case, a third-country worker, who was in possession of a residence permit that was valid for more than three months and who was a 'student', was hired as a sales assistant under a part-time fixed-term contract for six hours a week. His employment contract was subsequently renewed by various amendments. After a period of sick leave, the store in which he worked closed down, preventing him from returning to work. The employee brought various claims before the industrial tribunal, including the requalification of his contract as a full-time open-ended contract and the payment of back wages. In support of this claim, he argued that his contract had been signed for less than 24 hours a week, in breach of Article L. 3123-7 of the French Labour Code, whereas the maximum working time of 964 hours annually could not constitute a derogation from the minimum working time for part-time employees.

Firstly, the Court of Cassation ruled that the mere conclusion of a part-time employment contract that lasts less than the minimum 24 hours per week as stipulated in Article L. 3123-27 of the French Labour Code does not result in the contract being requalified as a full-time one of indefinite duration. In its view, this minimum working time was not a condition for part-time employment, but a guaranteed minimum working time.

Secondly, the Court of Cassation ruled that the provisions of Article L. 3123-27 of the French Labour Code, concerning the minimum working hours applicable to part-time contracts apply in compliance with the limit set in Article R. 5221-26 of the same Code on maximum annual working hours, intended to ensure that the salaried activity of a foreign worker holding a residence permit or a residence visa for a period of over three months as a student, remains incidental.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

French law is similar to the regulations that apply in Spain: the category of employees who have not been recruited following a selection procedure in compliance with these principles (civil servants) fall into a different category from those who have been recruited on the basis of such a procedure, both French and Spanish laws use the term 'employee for an indefinite period not employed on a permanent basis' for this special category.

In France, civil service jobs are, in principle, filled by civil servants. However, the General Statute of the Civil Service allows for the use of non-tenured staff, i.e. contract employees, at all three levels of the civil service – State, regional and hospital.

Under the terms of the Law of 13 July 1983 on the rights and obligations of civil servants, competitive examinations are the principal method of recruitment for civil servants.

However, as with any principle, there are exceptions to this rule for a variety of reasons. There are numerous exceptions: these employees are known as 'contract agents'. These are public sector employees who are not civil servants.

They are recruited directly under a permanent contract (CDI) or a fixed-term contract (CDD), and do not take part in competitive examinations.

As public servants are contract staff, their recruitment is subject to public law and not to the Labour Code.

The recruitment procedure applies in the following cases:

- temporary or seasonal increase in activity;
- temporary replacement of public employees (civil servants and contractual public employees) in a permanent post;
- temporary vacancy of a post pending the recruitment of a civil servant;
- recruitment of contractual staff on a permanent basis for permanent posts (in the absence of a job category, for service requirements or the nature of the duties, for small municipalities, groups of small municipalities and for non-full-time posts);
- recruitment on a project contract for a limited period of between one and six years;
- special recruitment (disabled workers, certain administrative or technical management posts, cabinet staff, staff of a group of elected representatives, etc.).

Private law fixed-term contracts

These are employees covered by private law under the Labour Code.

Recruited by public sector employers (the State or local authorities), they are expressly classified as private sector employees by law, for example: PEC (*contrat parcours emploi compétence*), CUI (*contrat unique d'insertion*), CES *(contrat emploi solidarité*), CEC (consolidated employment contract), apprentices, employment support contracts, etc.

Sessional work in the civil service

- The concept of contract staff should not be confused with that of temporary employees.
- Hourly contracts do not exist in law.

The term 'vacation' refers to a very precise, one-off task limited to the performance of specific acts that are not of a continuous nature. The situation is similar to that of a service provider hired and paid to perform a specific task.

Recruitment to a non-permanent post

Non-permanent posts may be filled by contract staff in the event of:

- temporary increase in activity over a period of 18 consecutive months for a maximum duration of 12 months, taking into account any renewal of the contract;
- seasonal increase in activity over the same period of 12 consecutive months, for a maximum duration of six months, taking into account any renewal of the contract;

project or operation contracts.

Temporary recruitment to a permanent post

Temporary replacement of staff in a permanent post*:*

Permanent posts may be filled by contract staff to temporarily replace civil servants or contract staff authorised to perform their duties on a part-time basis or who are unavailable due to:

- short-term secondment,
- short-term availability for family reasons, either automatically or at the employee's request,
- a secondment to complete a probationary period or a period of study prior to the establishment in a civil service body or framework of employment or to follow a course of preparation for a competition, giving access to a body or framework of employment, parental leave, etc.

Contracts are concluded for a fixed period and renewed by express decision for the duration of the absence of the official or contract staff member to be replaced.

Temporary vacancy pending recruitment of a civil servant:

To ensure continuity of service, permanent posts may be filled by contract staff to fill a temporary vacancy pending recruitment of a civil servant.

The contract is concluded for a fixed term once the creation or vacancy of the post has been advertised with the management centre and subject to an unsuccessful search for statutory candidates. This contract may not exceed one year. Its duration may be extended, up to a total of two years, if the recruitment procedure to fill the post with a civil servant has been unsuccessful at the end of the first year.

Employees recruited for a fixed term do not have an automatic right to renew their contract. Renewal of the contract is decided by the administration.

To fill a permanent post in a public State establishment, with the exception of posts filled by research staff

Fixed-term contract for a maximum of three years, renewable one time.

- After six years, the contract can only be renewed as a permanent contract, or
- a permanent contract is concluded immediately.

If there is no body of civil servants capable of carrying out the corresponding functions.

- Fixed-term contract for a maximum of three years, renewable one time After six years, the contract can only be renewed as a permanent contract, or
- a permanent contract is concluded immediately.

When the nature of the duties or the needs of the services justify recruitment: specialised or new technical skills, absence of a civil servant with the appropriate expertise or professional experience.

- Fixed-term contract for a maximum of three years, renewable one time. After six years, the contract can only be renewed as a permanent contract, or
- a permanent contract is concluded immediately.

When the job does not require statutory training leading to tenure in a body of civil servants.

- Fixed-term contract for a maximum of three years, renewable one time. After six years, the contract can only be renewed as a permanent contract, or

- a permanent contract is concluded immediately.

To fill an incomplete position (maximum 70 per cent of a full-time position).

- Fixed-term contract for a maximum of three years, renewable one time. After six years, the contract can only be renewed as a permanent contract, or
- a permanent contract is concluded immediately.

The public employer must inform the employee of its decision to renew or no later than:

- eight days before the end of the contract, if the contract is for less than six months;
- one month before the end of the contract, when the duration of the contract is equal to or greater than six months and less than two years;
- two months before the end of the contract, when the duration of the contract is equal to or greater than two years;
- three months before the end of the contract, in case of a staff member whose contract may be renewed for an indefinite period.

To be lawful, the decision to not renew a contract must be related to the interests of the service or to the way in which the employee has performed his/her duties.

A contract employee, whose contract was signed on or after 01 January 2021, and which is not renewed, will, under certain conditions, be entitled to the payment of an end-of-contract indemnity.

Notification of the final decision must be preceded by an interview when the contract is to be renewed for an indefinite duration, or when the duration of the contract (or of all the contracts concluded) is equal to or greater than three years.

To sign a project contract

A fixed-term contract for a minimum of one year and a maximum of six years. It may be renewed to complete the project or assignment, for up to a total duration of six years.

An evaluation of the French situation following the CJEU's decision is not straightforward: it leads to the question what an 'effective sanction' is, especially whether it must be defined in law.

The CJEU excludes the possibility for Member States to circumvent the Framework Agreement by means of labour law institutions that obscure the true nature of the particular employment relationship. The CJEU has clarified that any institute, however named, which leads to the abuse of successive fixed-term employment contracts, must be effectively sanctioned by the Member State.

Despite the development of civil service contracts, the French legislator remains indifferent to the invitations of the Court of Justice of the European Union, and has still not introduced any measures to penalise this type of abuse.

The total duration of a fixed-term contract is not regulated. As a result, the administration can employ the same contract worker several times, for one or more temporary recruitment reasons, but also on a permanent basis and alternately. Each recruitment must be based on a specific reason which is linked to a specific duration: this undeniably helps channel the flow. But can these measures alone prevent the abuse of fixed-term contracts and avoid any risk of creating a back-up workforce?

The system has been refined: the limits to the number of times a single employee can be hired under a fixed-term contract (CDD) to perform temporary functions are not defined by law, and as a result, there are no standards to easily qualify abuse. While

the 'maximum' duration of fixed-term contracts for permanent positions is clearly defined in law (six years), the total duration of fixed-term contracts for the same employee, who is considered 'lawful' to perform temporary functions, remains imprecise.

The French legislator, despite having embarked on a process of 'privatisation' of civil service law, has not been inspired by the numerous sanctions provided for in the French Labour Code for private sector employers who fail to comply with the rules governing the use of fixed-term contracts. Under these circumstances, Article L.1245-1 of the French Labour Code provides for no fewer than nine cases in which a fixed-term contract may be requalified as an open-ended contract (for example, a fixed-term contract, whatever its purpose, is requalified if its purpose or effect is to fill a job on a permanent basis that is linked to the normal and permanent activity of the company). Under criminal law, employers who fail to comply with the rules governing the use of fixed-term contracts are liable to a fine of EUR 3 750 (French Labour Code, Articles L. 1248-1 et seq.).

Compensation for the damage suffered is therefore the sole responsibility of the courts, which have determined the criteria for classifying abuse as well as the procedures for punishing it in the civil service.

Litigations remain numerous: for example, in its decision of 2015, the Conseil d'état, the French highest administrative court, stated that

> *"Considering, however, that it follows from what was said in point 5 above that it is for the judge to assess whether the use of successive fixed-term contracts pursuant to the provisions mentioned in point 2 is abusive, to take into account all the factual circumstances submitted to the judge, in particular the nature of the duties performed, the type of employing body and the number and cumulative duration of the contracts in question; that in this respect, it is clear from the documents in the file submitted to the Lyon Administrative Court of Appeal that Ms A. had worked as a cleaner at the Saint-Georges-sur-Baulche medical-educational institute between 05 November 2001 and 04 February 2009; although these duties were performed to replace staff who were unavailable or authorised to work part time, they gave rise to twenty-eight successive contracts and amendments; that in ruling that the medical-educational institute had not, under these circumstances, made improper use of a succession of fixed-term contracts, the Administrative Court of Appeal incorrectly qualified the facts before it" (see Conseil d'État Dame A. 20/03/2015 - Requête(s): 371664).*

This case law is constant.

The question of an 'effectively sanctioned' right remains: the concerned persons must bring their case before the court.

4 Other Relevant Information

Nothing to report.

Germany

Summary

(I) The Federal Labour Court has submitted a request for a preliminary ruling on collective redundancies.

(II) The Labour Court Erfurt has ruled that an employer cannot be prohibited from implementing a so-called `business alteration´ by means of an interim injunction.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Request for a preliminary ruling relating to collective redundancies

Federal Labour Court, 23 May 2024, 6 AZR 152/22 (A)

In its ruling of 01 February 2024, 2 AS 22/23 (A), the Second Senate of the Federal Labour Court requested the Court of Justice of the European Union (CJEU) to issue a preliminary ruling on the interpretation of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (see Flash Report February).

In addition to this referral, the Sixth Senate has requested the CJEU in a ruling of 23 May 2024, to interpret EU law on whether, among other things, the purpose of the collective redundancy notification is fulfilled if the employment agency does not object to an incorrect collective redundancy notification and thus considers itself to be sufficiently informed.

2.2 Injunctive relief in case of `business alterations´

Labour Court Erfurt, 19 February 2024, 6 BVGa 1/24

The Labour Court has ruled that an employer cannot be prohibited from implementing a so-called `business alteration´ (in the underlying case: the closure of a plant) by means of an interim injunction to safeguard the works council's participation rights. The Court reasoned that the wording of the law, which only provides for a right to information and consultation on the part of the works council and imposes conclusive sanctions for infringements in sections 113 and 121 BetrVG, already speaks against a general right to injunctive relief on the part of the works council in section 111 BetrVG.

The Court also dealt with Directive 2002/14/EC. According to the Court, this does not require a different assessment. The `appropriate sanctions´ required are guaranteed in section 113 BetrVG, and the sanctioning as an administrative offence pursuant to section 121 BetrVG.

A current comment on the judgment asserts:

> *"It remains to be seen whether a trend towards the rejection of the right to injunctive relief under section 111 BetrVG will actually emerge or whether regional differences will continue to be observed. Case law continues to provide inconsistent answers to this question, which is strategically crucial for [the employer and the works council] (...) From the perspective of the works council,*

this decision once again clarifies that case law—at least in part—denies a right to injunctive relief under the works constitution and thus creates a scenario where the employer may potentially act unilaterally, creating a fait accompli. Consequently, the sanctioning of a violation of Section 111 BetrVG is framed purely in terms of individual law, but not collective law".

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The decision is unlikely to have any implications for German legislation, as it essentially revolves around a specific form of contract (`non-permanent contract of indefinite duration´) in Spain for which there is no equivalent in German law.

4 Other Relevant Information

Nothing to report.

Greece

Summary

The Supreme Court issued a decision on the definition of working time.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

The Greek Supreme Court, No. 1366/2023

The Greek Supreme Court (1366/2023) states that an employee's commute from his/her residence to his/her workplace and the return home is not, as a rule, considered working time, but as time allocated by the employee to fulfil his/her obligation to provide work. However, if an employee leaves his/her residence one hour earlier to reach his/her workplace and returns one hour later, because he/she had to pass by other co-workers' place of residence and to transport them to the workplace, as well as to return them to their place of residence at the end of working day, this time spent travelling is considered working time.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

This judgment has implications for Greece. Firstly, the ruling reiterates the Court's position that constitutional provisions, such as Article 103 of the Greek Constitution, which prohibit the conversion of a fixed-term employment contract into one of indefinite duration, do not exclude the application of the provisions of European legislation as long as there are no equivalent legislative measures. Secondly, fixed-term contracts in the public sector have not been extended in line with legislative provisions.

The CJEU's decision is therefore of relevance for Greek law. However, Greek jurisprudence (Supreme Court 737/2022) states that the payment of severance pay at the end of a contract meets the purpose of Clause 5 of the Framework Agreement to prevent abuse arising from the use of successive fixed-term contracts. The Court also states that to apply the national rules on the conversion of fixed-term contracts into ones of indefinite duration (Article 8 (3) of Law 3198/1955), it should be established whether the basic condition for the rules' application is met, which is the employer's intention to circumvent the protection of the employee provided for in the provisions on contracts of indefinite duration.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

The amendment of the Labour Code includes minor changes to Article 153 in line with the Minimum Wage Directive.

1 National Legislation

1 National Legislation

1.1 Amendment of the Labour Code

Act 28 of 2024 amended Labour Code has been in force since 11 May 2024. The amendment include changes to Article 153 to bring the law in line with the Minimum Wage Directive (changes in bold):

> *"(1) The government is hereby authorised to determine the amount and scope of:*
>
> *a) the mandatory minimum wage, and*
>
> *b) the minimum guaranteed wage,*
>
> *following consultations in the National Economic and Social Council* ***and the forums designated by the government****, by means of a decree.*
>
> *(2) The mandatory minimum wage and the minimum guaranteed wage specified by the government may differ for certain groups of employees.*
>
> *(3) The amount and scope of the mandatory minimum wage and the minimum guaranteed wage shall, in particular, be determined on the basis of the requirements prescribed for specific occupations, the indicators of the national labour market, the status of the national economy, and the unique requirements of certain economic sectors and geographical areas in terms of workforce.*
>
> *(4) The amount of the mandatory minimum wage and minimum guaranteed wage shall be reviewed each calendar year.*
>
> *(5)* ***The government is authorised to establish in a decree the forum designated for the consultation of the mandatory minimum wage and the minimum guaranteed wage, and the rules for the consultation****."*

Moreover, Article 299 point s) declares that the Labour Code is in line with Directive 2022/2041.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The Hungarian employment acts, both in the private and public sectors, differentiate between open-ended and fixed-term contracts. Therefore, 'non-permanent contracts of indefinite duration' do not exist in Hungarian labour law (employment acts). Consequently, the ruling has no implications for Hungary.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

The Supreme Court has confirmed the Court of Appeal's ruling on working time.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Working time

Court of Appeals, Case No. 197/2022, 15 September 2023

On 15 May, the Supreme Court confirmed the judgment of the Court of Appeal in case No. 197/2022 of 15 September 2023 on the definition of working time according to the Working Time Directive when an employee travels abroad for work.

The case was covered in the September 2023 Flash Report and confirms the finding of the District Court, the Court of Appeals and the EFTA Court.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

Fixed-term work in Icelandic law is covered in the Act on Employment of Fixed-term Employment No. 139/2002 (*Lög um tímabundna ráðningu starfsmanna)*, which transposed the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, and annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP.

The Act prohibits extending fixed-term employment contracts beyond two consecutive years, unless explicitly stated otherwise in law (see Article 5(1)). According to Article 5(2), a new fixed-term employment agreement is concluded if it is extended consecutively when the previous one ends or if it is renewed within six weeks from the end of the previous fixed-term employment contract. In Icelandic law, if a fixed-term employment agreement is not renewed but the employment continues without a written agreement or if a fixed-term employment agreement is concluded after the permissible two-year period has passed, the employment relationship will be considered one of indefinite duration. Finally, Article 8 stipulates that if an employer violates the provisions of the Act, they may be liable for damages. To the author's knowledge, no court rulings have been issued to clarify the extent of those damages. Under Icelandic law, employment agreements can either be of indefinite duration, which can generally be terminated relatively easily with a notice period, or a fixed-term agreement in accordance with specific legal provisions.

Given these aspects of Icelandic law regarding fixed-term employment contracts, it appears that Points 1 to 3, 5, and 7 of the Court's conclusion will not have any implications for Icelandic law. Furthermore, Icelandic law does not contain provisions similar to those stated in Points 4 and 6 of the Court's conclusion. Therefore, it is unlikely that these points will have any implications for Icelandic law.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

Legislation has been enacted to enhance the protection of employees in a collective redundancy where the employer is insolvent.

1 National Legislation

1.1 Collective redundancies

Legislation has now been enacted to amend, *inter alia*, the Protection of Employment Act 1977 (`the 1977 Act´) which, as previously amended, transposes Directive 98/59/EC. The legislation was introduced in response to a commitment in the government programme to review whether the legal provisions surrounding collective redundancies and the liquidation of companies effectively protected workers' rights.

The stated purpose of the Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 is `to further enhance the protection of employees in a collective redundancy in a way that does not unduly impede enterprises in the conduct of their business´.

This Act amends the 1977 Act to provide that, where a liquidator is managing the collective redundancy process, he or she must fulfil the employer's information, consultation and notification obligations. It further amends the 1977 Act to provide that all collective redundancies are subject to a 30-day notification period before they can take effect, including where the employer is insolvent. The Act does not, however, provide that dismissals effected before the expiry of that 30-day period are legally invalid or void. Instead, the amendments provide that if employees are made redundant before the expiry of that period, they can seek redress of up to four weeks' remuneration from the Workplace Relations Commission.

The Act has not yet been brought into operation, however.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

These cases concerned a category of worker, namely an employee engaged under a non-permanent contract of indefinite duration, which is unknown to Irish law. The Protection of Employees (Fixed-Term Work) Act 2003 (`the 2003 Act´), which transposes Directive 99/70/EC, is predicated on the binary divide between a `permanent employee´ and a `fixed-term employee´(see the definition of the former in section 2(1) of the 2003 Act). In *Irish Museum of Modern Art v Stanley* FTD146, the Labour Court dealt with a complaint by a worker whom the employer described as a `permanent casual´. The Court ruled that the worker was not a `fixed-term employee´.

The use of the word `permanent´ does not imply that the employee has a `job for life´ or until he or she reaches pensionable age. It is clear from the language used in sections 8 and 9 that it means that the employee is engaged on a `contract of indefinite

duration´. This term is not defined in the 2003 Act but it has been judicially defined as meaning no more than a contract terminable upon giving reasonable notice: see *Sheehy v Ryan* [2008] IESC 14.

Clause 5 of the Framework Agreement was transposed by section 9 of the 2003 Act, subsection (2), which provides that the `aggregate duration´ of employment under fixed-term contracts may not exceed four years. Subsection (3) provides that where any term of a fixed-term contract purports to contravene subsection (2), that term `shall have no effect and the contract concerned shall be deemed to be one of indefinite duration´. It should be noted, however, that subsection (4) provides that subsections (2) and (3) shall not apply to the renewal of a fixed-term contract `where there are objective grounds justifying such a renewal´.

The first or single use of a fixed-term contract does not need to be justified by objective grounds or reasons. Consequently, the Labour Court has ruled that the requirement of concluding two or more fixed-term contracts was a condition precedent to the entitlement of an employee to be granted a contract of indefinite duration (see *Department of Employment Affairs and Social Protection v Concarr* FTD184).

Sections 14 and 15 of the 2003 Act authorise adjudication officers and the Labour Court on appeal, where, for instance an abuse of successive fixed-term contracts has occurred, to reinstate the employee on a contract of indefinite duration or award compensation of up to two years' remuneration.

4 Other Relevant Information

Nothing to report.

Italy

Summary

(I) In May, the Italian government approved the Legislative Decree on Disability.

(II) The Court of Cassazione dealt with the dismissal of a disabled worker.

(III) The National Labour Inspectorate clarified the procedures to revoke the resignation of a working mother or father.

1 National Legislation

Legislative Decree 3 May 2024 No. 62 amends the terminology on disability, introducing a new definition in line with that of Article 1 of the UN Convention on the Rights of Persons with Disabilities. The concept of disability is thus redefined: it is no longer considered a characteristic, but a result of the interaction between the individual and their surrounding environment.

The new definitions have been introduced in Article 2 and Article 3. In particular:

- "Condition of disability": a lasting impairment in physical, mental, intellectual or sensory neurodevelopment which, in combination with different obstacles of another nature, can inhibit full and effective participation in different life contexts on an equal basis with others.
- "Person with disability": an individuals with lasting physical, mental, intellectual or sensory impairments which, in combination with different obstacles of another nature, can inhibit full and effective participation in different life contexts on an equal basis with others. This is determined through a basic assessment.
- "Lasting impairment": an impairment resulting from any loss, limitation or anomaly of bodily structures or functions, as classified by the International Classification of Functioning Disability and Health, which persists over time or for which regression or attenuation is only possible in the long run.
- "Support": services, interventions and benefits identified through the assessment of the disability condition and life project, aimed at improving the person's skills and inclusion, as well as offsetting restrictions to social participation. Support is categorised as "support" and "intensive support", by reason of frequency, duration and continuity of support.

The Decree also defines the procedures for the assessment of disability (Articles 5-16) and for recognition of reasonable accommodation (Article 17).

Articles 18 to 32 outline provisions for an individualised and personalised life project. This project begins with the individual's aspirations, expectations and preferences and aims to identify both formal and informal forms of support. The objective is to enhance the individual's quality of life, develop their full potential, and enable them to choose and participate in various life contexts with equal opportunities in relation to others.

2 Court Rulings

2.1 Disability discrimination

Corte di Cassazione, 02 May 2024, n. 11731

Indirect discrimination occurs when regulations and practices related to dismissal for exceeding a period of sick leave are applied uniformly to all workers, including workers

with disabilities, without considering the distinct differences between disability and illness.

The Court's decision referred to the dismissal of an employee suffering from a serious cancer condition, after the period of protection had ceased. The Court determined that the subjective element of indirect discrimination typically involves the employer's awareness of the employee's disability. Consequently, when calculating the period of protection, any absences due to disability should not be included.

The Court's decision is also based on Directive 2000/78/CE, which is cited several times in the judgment.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

In Italy, civil servants are typically employed under a contract of indefinite duration. Fixed-term contracts are only permitted in case of temporary and exceptional circumstances (Art. 36, Legislative Decree 165/2001). Unlike Spanish law, Italy does not have a concept equivalent to the `non-permanent contract of indefinite duration´.

Fixed-term employment contracts in the public sector in Italy can last up to a maximum of three years, including any extensions and renewals, regardless of the reason.

In the past, the Court of Justice has addressed the issue of abuse of fixed-term contracts by Italian public administrations, particularly in the school sector (CGUE 26 November 2014, Mascolo). The legislator subsequently intervened to regulate the matter.

In cases in which fixed-term contracts have been repeatedly and unlawfully concluded by a public administration, their conversion into contracts of indefinite duration must be excluded. However, the employee is entitled to compensation for any damage caused by this illegal practice. It is not an `end-of-contract compensation independent of any consideration relating to the lawful or abusive nature of the use of fixed-term contracts´, but is specifically awarded due to the unlawfulness of the employer's actions. The general allowance paid at the end of the employment relationship, the `*trattamento di fine servizio*´ (TFS), is a deferred part of the remuneration and does not serve a compensatory function.

Furthermore, the Court of Justice dealt with the Italian procedures for consolidating temporary employment in the school sector (CJEU 08 May 2019, C-494/17, Rossato). The Court ruled that `*legislation which, as applied by the national Supreme Court, is lawful if it precludes any entitlement to financial compensation for the abuse of successive fixed-term employment contracts for public sector teachers whose employment relationship has been converted from a fixed term into one of indefinite duration, with limited retroactive effect, if such conversion is neither uncertain nor unpredictable or advantageous, and limited consideration of the period of service completed under those successive fixed-term employment contracts, is a proportionate measure to address that abuse*´.

Consequently, given the unique nature of the Spanish contract, which does not provided for by Italian law, and the various judgments of the Court of Justice concerning the Italian regulations on fixed-term contracts within public administrations (which is also referred to in the ruling), the judgment in question does not appear to have any implications for Italian law.

4 Other Relevant Information

4.1 Resignation of a working mother or father

According to Article 55, paragraph 4, of Legislative Decree 151/2001, any consensual termination of the employment relationship or request for resignation submitted by a worker during pregnancy or by either parent within the child's first three years of life (or when a child joins the family, in case of adoption or foster care), must be validated by the Territorial Labour Inspectorate. In such cases, the resignation can be revoked before the issuance of the validation order, or even later, provided it takes place before the effective termination of the relationship. The decision to revoke the resignation must also be verified by the Inspectorate, which must carefully assess the merits of the reasons provided, and may withdraw the validation. In addition, if the Inspectorate suspects unlawful or discriminatory conduct by the employer, he/she may carry out inspections. Revocation is not possible if the resignation has already been validated and has taken effect. In such cases, the employment relationship can only be restored with the employer's consent (see in: INL (National Labour Inspectorate) 8 May 2024 No. 862).

Latvia

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 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The CJEU's judgment has no implications for Latvian law, as it does not envisage any other type of employment relationship other than a 'traditional' fixed-term relationship.

4 Other Relevant Information

Nothing to report.

Liechtenstein

Summary

The Liechtenstein draft law (with an accompanying report) on cross-border conversions, mergers and divisions transposes Directive (EU) 2019/2121 amending Directive (EU) 2017/1132 on cross-border conversions, mergers and divisions. Adjustments are made in the context of employee participation in cross-border mergers and new provisions for employee participation in the cross-border transfer of registered offices and in cross-border divisions.

1 National Legislation

The provisions transpose Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 on cross-border conversions, mergers and divisions. The Directive expands the possibilities for cross-border restructuring and makes it easier for companies operating across borders to adapt their structures to changing market and framework conditions.

Directive (EU) 2019/2121 aims to achieve a proper balance between the freedom of establishment of companies in the EU internal market and the protection of employees, (minority) shareholders and creditors. To this end, it contains harmonised company law provisions for the first time on the cross-border transfer of registered offices and the cross-border division of corporations as well as corresponding provisions amending those on cross-border mergers.

The objective of the draft law is to adapt Liechtenstein law in line with Directive(EU) 2019/2121. As regards labour law, this is to be achieved as follows:

(1) In the context of cross-border restructuring, comprehensive information, consultation and participation rights are provided for to protect the employees.

(2) Adjustments have been made to employee participation in cross-border mergers, and new provisions on employee participation in cross-border transfers of registered offices and in cross-border divisions have been introduced.

(3) The right of competent management and administrative bodies of the participating companies to decide against conducting negotiations on employee participation is restricted.

(4) The procedure for creating a right to employee participation in the event of cross-border transfers of registered offices or divisions shall essentially be analogous to the participation procedure for cross-border mergers.

(5) If there are indications of abusive behaviour—which in individual cases may include the deliberate deprivation or circumvention of employee rights—an official investigation for abuse must be carried out.

The Liechtenstein government has submitted a draft law with an accompanying report for consultation. The consultation will last until 12 June 2024. Thereafter, the government will evaluate the comments received and submit a report and motion to Parliament.

The amendment as regards labour law is of considerable significance. It will have implications for the economy, the labour market, workers and employers. Several important issues related to cross-border conversions, mergers and divisions will be newly regulated.

The amendment as regards labour law departs from previous lines of reasoning, because the existing structures are used to implement the changes. Employee participation in cross-border mergers in Liechtenstein is regulated in the Merger-Participation Act (Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Fusion von Kapitalgesellschaften, Fusions-Mitbestimmungsgesetz, FMG, LR 216.222.3), which was created in the context of the implementation of Directive 2005/56/EC. The changes required by Directive (EU) 2019/2121 to ensure employee participation are to be implemented by means of an amendment of the Merger-Participation Act. At the same time, this Act is to be renamed the Restructuring-Participation Act (Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Umstrukturierung von Kapitalgesellschaften, Umstrukturierungs-Mitbestimmungsgesetz, UMG). The Restructuring-Participation Act is to be based on the current Merger-Participation Act in both system and content. A full revision of this Act will take place rather than just a partial revision, as nearly all of the Act's provisions will be amended in line with Directive (EU) 2019/2121.

The purpose of the consultation of municipalities, courts, businesses and employers' associations, the Liechtenstein Trade Union and other organisations is to provide the government with an understanding of the likely legal and political implications. For this reason, the government always adapts the original draft law based on the consultation's outcomes before it is submitted to Parliament.

The main purpose of the amendment is to transpose Directive (EU) 2019/2121. An initial review of the draft law indicates that the government aims to bring its legislation in line with the aforementioned Directive.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

In the joined cases C-59/22, C-110/22 and C-159/22, the CJEU (Sixth Chamber) ruled as follows:

1. Clauses 2 and 3 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that a worker having a non-permanent contract of indefinite duration must be considered a fixed-term worker within the meaning of that Framework Agreement, and therefore, as falling within the scope of that agreement.

2. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as meaning that the expression 'use of successive fixed-term employment contracts or relationships' in that provision includes situations in which, since the administration concerned failed to organise a selection procedure within the relevant deadline to definitively fill the post occupied by a worker with a non-permanent contract of indefinite duration, that worker's temporary contract with that administration was automatically extended.

3. Clause 5(1)(a) to (c) of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation which does not provide for any of the measures referred

to in that provision or an 'equivalent legal measure' within the meaning of that provision to prevent abuse of non-permanent contracts of indefinite duration.

4. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation that provides for the payment of limited compensation equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration by successively extending them, where the payment of that end-of-contract compensation is independent of any consideration relating to the lawful or abusive nature of the use of such contracts.

5. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national provisions under which 'unlawful actions' give rise to liability on the part of public administrations 'in accordance with the rules in force in each of [those] public administrations', where those national provisions are not effective and a deterrent to ensure that the measures taken pursuant to that clause are fully effective.

6. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation that provides for the organisation of procedures for the consolidation of temporary employment, by means of the publication of vacancy notices to fill the posts occupied by temporary workers, including non-permanent workers with contracts of indefinite duration, where that organisation is independent of any consideration relating to the abusive nature of the use of those temporary contracts.

7. Clause 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as meaning that in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive fixed-term contracts, including non-permanent contracts of indefinite duration which have been successively extended, the conversion of those temporary contracts into permanent ones may constitute such a measure. It is, as the case may be, for the national court to amend the established national case law if it is based on an interpretation of the provisions of national law, including constitutional provisions, which is incompatible with the objectives of Directive 1999/70 and, in particular, of Clause 5 of the Framework Agreement.

The judgment C-59/22, C-110/22 and C-159/22 is based on very specific circumstances that apply under Spanish law on public sector employees. At the centre of dispute was the legal concept *'non-permanent contract of indefinite duration'* (*'trabajador indefinido no fijo'*), which must be distinguished from the concept of 'permanent worker' (*'trabajador fijo'*). The key to understanding the cases before the CJEU lied in its reasoning in paragraph 63 of the judgment. The following was stated: while the termination of a permanent worker's contract is subject to the grounds for termination and the general conditions laid down by the Workers' Statute, the termination of the non-permanent contract of indefinite duration is subject to a *specific ground of termination*. Thus, where the employment relationship concerned is reclassified as a non-permanent contract of indefinite duration, the administration concerned would be required to follow the procedure for filling the post held by the worker employed on a non-permanent contract of indefinite duration by applying the constitutional principles of publicity, equality, merit and ability. Once that post has been filled, the worker's non-permanent contract of indefinite duration would be terminated, unless that worker had himself or herself participated in that procedure and had been awarded that post.

The CJEU's statements are based on the principle that a non-permanent contract of indefinite duration—the duration of which is limited by the occurrence of a specific event, namely the definitive awarding of the post occupied by the worker concerned to the person who successfully passed the competition organised by the administration to fill

that post—must be treated as a fixed-term contract for the purposes of applying Directive 1999/70 (cf. sentence No. 1 of the judgment).

The CJEU's statements seem entirely plausible, but do not appear to be of specific relevance from a Liechtenstein perspective. The Liechtenstein State Personnel Act (Gesetz über das Dienstverhältnis des Staatspersonals, Staatspersonalgesetz, StPG, LR 174.11) clearly distinguishes between fixed-term and permanent employment relationships. According to Article 12 of the State Personnel Act, an employment relationship is generally established for an indefinite period. Pursuant to Article 13 of the State Personnel Act, a fixed-term employment relationship is established for a maximum period of three years; in justified cases, the government may extend a fixed-term employment contract for a maximum of two additional years. This is established in the State Personnel Ordinance (Verordnung über das Dienstverhältnis des Staatspersonals, Staatspersonalverordnung, StPV, LR 174.111). The author has thus far not encountered an official practice comparable to that applicable under Spanish law on public sector employees. This result was confirmed upon inquiry of a Liechtenstein official (*Amt für Volkswirtschaft*).

4 Other Relevant Information

Nothing to report.

Lithuania

Summary

The presumable temporary work agency was relieved of the obligation to compensate for the damage caused by its employee (stolen computers from the user undertaking) due to the lack of formal evidence of the temporary work agreement.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Personal responsibility of the temporary worker for acts of theft

Lithuanian Supreme Court, No. 2K-89-697/2024, 07 May 2024

The temporary work agency was relieved of the obligation to compensate for the damage caused by its employee (stolen computers from the user undertaking) due to the lack of formal evidence of a temporary work agreement. This conclusion was reached by the Criminal Cases Division of the Lithuanian Supreme Court in a criminal case, where an employee of one company assigned to work for another pleaded guilty for stealing computers from the latter.

It seems that Lithuanian courts are still struggling to adequately deal with the phenomenon of temporary work, heavily relying on formal aspects of the employment, such as the indication of an employee's status in his/her service contract, the lack of description of the assignment procedure in temporary employment contracts, and the non-registration of the presumable temporary work agency in the register of the State Labour Inspectorate, etc. These circumstances allowed the court to shift the responsibility for the stolen goods from the temporary work agency (as provided by Article 77 of the Labour Code) to the employee himself, despite the fact that the employee, who had concluded a contract with one company, had worked under the instructions of another company, which integrated him into the activities of its IT department and functioned as his supervisor, also provided feedback on his work to the juridical employer, decided to extend the employment contract. In the court's view, the juridical employer had no opportunity to influence the property protection procedures established by the user undertaking, and that the user undertaking was to bear the consequences of the risk of providing the employee the opportunity to steal the computers.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The CJEU's ruling does not have any direct implications for Lithuanian law, as there is no category of employees or public servants 'having non-permanent contracts of indefinite duration'. The Labour Code of the Republic of Lithuania, which regulates employment relations (*stricto sensu*), includes a specific provision on the limitations of the duration of fixed-term employment relationships and the prohibition of misuse of such contracts. According to Article 68 (1) of the Labour Code, the maximum term of a fixed-term employment contract, as well as of successive fixed-term employment

contracts concluded with the same employee for the same job function, may be concluded for a maximum duration of two years, except in cases where the employee is accepted to work temporarily at the workplace of a temporarily absent employee (this exception is also interpreted in a narrow way. A fixed-term employment contract becomes open-ended when the circumstances that defined the term of the contract cease during the period of the worker's employment relationship (Article 67 (3) of the Labour Code). The total duration of consecutive fixed-term employment contracts concluded with the same employee for the performance of different job functions may not exceed 5 years in total. If this requirement is violated, the employment contract is converted into a contract of indefinite duration, and the periods between fixed-term employment contracts are included in the duration of the employee's employment relationship with the employer, but must not be paid.

As for public servants, the Lithuanian Law on Public Service specifies the concept of temporary public servant (in Lithuanian – *laikinasis valstybės tarnautojas*), whose particularity is the temporary acceptance to the public service without open competition. However, the term of public service without open competition is strictly limited. As stipulated in Article 11 (3) of the Law on Public Service, a temporary civil servant may be employed:

1) if a career civil servant or a civil servant of political (personal) trust needs to be replaced, who is temporarily unable to perform his/her duties, until the civil servant returns, but for no longer than three years;

2) in cases of a state of war, state of emergency, extreme events or emergency situations, or when due to events that could not be foreseen in advance, the scope of activities has increased and the state or municipal institution urgently needs to perform specific tasks or functions, but for no longer than two years.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

The Court of Appeal ruled on a case which concerned an employee's right to disconnect during leave.

1 National Legislation

Nothing to report.

2 Court Rulings

A decision by the Court of Appeal of 08 February 2024 may be of interest from a European labour law perspective, as it rules on the employee's right to disconnect during leave.

The Court held:

> "*During his annual leave, the employee is entitled to rest. During his rest leave, he may not engage in his work remotely, he may disconnect and he is not, in principle, required to respond to the employer's solicitations.*
>
> *In the present case, it is clear from the text messages exchanged between the parties that the respondent, contacted during his leave about an assignment with the company ..., contacted one of the company's managers the following day and that it was agreed to make more detailed contact at the end of the employee's leave. It follows that a refusal to work or an act of insubordination on the part of the employee can only be proven"*.

The employer cannot therefore dismiss an employee on the grounds that he/she did not immediately respond to a request from his employer made during his/her leave.

Luxembourg passed the Law of 28 June 2023 on the right to disconnect. This law does not create the right to disconnect per se, which is deemed to exist by virtue of the rules on working time, but obligates companies to put in place systems to ensure that this right is effectively respected. The fact that penalties for non-compliance have been postponed for three years after entry into force implies that some companies seem to be under the mistaken impression that the obligations arising from the law are not yet applicable. This law was discussed in the recent AHR on teleworking and the right to disconnect.

2.2 Reimbursement of Employee Recruitment Costs

Employee retention is an important issue for employers. However, in accordance with the principle of freedom to work, an employee is generally entitled to resign at any time with notice and without having to give reasons. It is in principle not permitted to restrict an employee's right to resign by agreement. Only certain clauses are permitted within limits of proportionality, such as clauses requiring the employee to reimburse training costs if he/she resigns prior to a pre-specified period.

In the present case, an employer faced difficulties recruiting employees on the local and even European market, and hired third-country nationals. The employer agreed to take responsibility for the formalities involved in obtaining a work permit and financed the air travel, as well as the first week's accommodation in Luxembourg. The employment contract stipulated that in the event of resignation within three years, the employee had

to reimburse travel and accommodation costs, as well as the internal administrative cost of the residence permit, which was estimated at a lump sum of EUR 25 000. In first instance, the clause relating to travel and accommodation expenses was declared valid, since it corresponded to actual expenses; for the work permit, the indemnity was reduced to EUR 5 000. On appeal, only the actual travel and accommodation expenses were awarded. A clause providing for lump-sum reimbursement of recruitment expenses was held to excessively restrict the employee's freedom to resign.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

After thorough analysis of the numerous aspects and answers of this ruling, it seems that it does not have any immediate relevance for Luxembourg, given the very specific type of employment contracts in the Spanish public service under discussion. They constitute a judicial creation for the (at least in theory) temporary filling of posts in public service and are terminated once the position has been filled by a definitive candidate recruited in line with a specific procedure.

There is no similar situation in Luxembourg, neither in the private nor in the public sector. An employment contract may be concluded to temporarily replace a post that has become vacant, pending permanent recruitment. However, this type of contract is subject to all the restrictive regulations governing fixed-term contracts. In this respect, Luxembourg law is clearly more restrictive than the requirements of the Directive.

4 Other Relevant Information

Nothing to report.

Malta

Summary

New regulations on temporary agency worker have been issued.

1 National Legislation

1.1 Temporary agency workers

Malta has decided to repeal the original Temporary Agency Workers Regulation, 2010, and has promulgated new Temporary Agency Workers Regulations, 2024 (Legal Notice 128 of 2024) to repeal and substitute the previous regulations on 04 June 2024.

The new regulations are clearly intended to align with the Employment Agencies Regulations, 2024 (reported in previous Flash Reports). The declared objective of these regulations is to give effect to the relevant provisions of Directive 2008/104/EC. The main amendment is the introduction of the concept of 'outsourcing agency', which means

> *"any natural person or a legal person whose objects include the carrying out of all the relevant activities as well as all activities ancillary or incidental thereto, but do not include objects which are not compatible with the services of an outsourcing agency, that enters into contracts of employment or employment relationships with employees and that assigns, whether on a regular or on an irregular basis, the employees to user undertakings to work there temporarily, by being physically present at the premises of the user undertaking or working remotely, under the supervision, direction and control of the outsourcing agency, whether or not such activity is the main or ancillary activity of the outsourcing agency".*

The regulations will enter into force on 01 January 2025. Detailed information will be provided in the June 2023 Flash Report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The concepts raised in this judgment are extremely interesting. It must be stated, first off, that the concept of 'non-permanent contract of indefinite duration' is unknown in the Maltese legal system. What exists in Malta are 'regular' fixed-term work agreements which, by definition, are not indefinite (see Article 33 of the Employment and Industrial Relations Act, 2002, Chapter 452 of the Revised Edition of the Laws of Malta) or contracts of work to complete a specified task, assignment, work or service. Variable hours contracts exists as well, which are treated as part-time employment contracts. Malta does not use zero-hours contracts. Fixed-term contracts can also be concluded for part-time work, which is also not very common, but employees who have concluded these types of contracts enjoy the protection of part-time or fixed-term employees (see

Contracts of Service for a Fixed-Term Regulations, 2007 (Legal Notice 452.81), Regulation 7).

Against this backdrop, the rulings do not really have any implications, though it must be said that there is extensive protection against abuse of successive fixed-term contracts under Maltese law.

4 Other Relevant Information

4.1 Temporary Agency Workers Regulation 2024

Currently, the overlap and links between the Temporary Agency Workers 2024, and the Employment Work Agencies, 2024 are being analysed.

Netherlands

Summary

(I) Minister Van Gennip (Social Affairs and Employment) informs the House of Representatives about the proposed Provision of Personnel (Accreditation) Act.

(II) Three internet consultations have been launched on staff retention in crisis, introduction of bereavement leave, and transfers of undertakings that have declared bankruptcy.

(III) A District Court has prohibited a strike, and another District Court has interpreted Directive 2001/23/EC.

(IV) The four ruling parties (PVV, VVD, NSC and BBB) have presented their General Agreement 2024–2028 to govern the Netherlands.

(V) A research report on children of migrant workers has been published.

(VI) For the first time, a large experiment will start on the obligation to apply for a job.

(VII) Businesses, organisations, professionals and the government have signed an agreement on more equal employment opportunities.

1 National Legislation

1.1 Parliamentary letter on implementation of and less regulation in the Act on Admission for the Assignment of Workers

The letter (14 May 2024) addresses ongoing efforts to fight the poor working conditions labour migrants are exposed to in the Netherlands. The government is actively undertaking efforts to implement the recommendations of the Labour Migrant Protection Taskforce (*Aanjaagteam Bescherming Arbeidsmigranten*). A significant part of this effort is the proposed Provision of Personnel (Admission) Act (*Wet toelating terbeschikkingstelling van arbeidskrachten*, hereinafter: *Wtta*).

The letter informs the House of Representatives about the implementation test and secondary legislation associated with Wtta. It also informs the House of Representatives of the revised timetable for introducing the admission system. Wtta prohibits user undertakings from hiring out workers without authorisation. Under this system, the Minister of Social Affairs and Employment will be responsible for issuing permits to user undertakings. Justis is designated to issue these permits on behalf of the Minister of Social Affairs and Employment, and is currently conducting an implementation test. Justis's implementation test focuses on whether it can effectively carry out the tasks outlined in Wtta, as specified in the bill before the House of Representatives, along with the associated regulations.

The letter then addresses less regulation. The bill includes provisions for additional regulation through an order in council (*Algemene Maatregel van Bestuur,* hereinafter: AMvB) or ministerial regulation. These regulations have been published for consultation. The letter states that the final drafts of the AMvB and ministerial regulation are expected to be ready by the end of summer. The goal is to inform the House of Representatives about these regulations in October, in addition to information on the implementation by Justis.

Finally, the letter discusses the timeline for implementation. Due to delays, the implementation of Wtta has been postponed by a year. The new implementation timeline aims for Wtta to take effect on 01 January 2026. From 01 January 2027, the Labour

Inspectorate (*Arbeidsinspectie*) will begin enforcing the regulations on lenders and hirers.

1.2 Internet consultations

1.2.1 Bill on staff retention in crisis

In crisis situations such as wars, pandemics or floods, the government aims to prevent employers from encountering difficulties and employees from losing their jobs. To address these unforeseeable situations, which fall outside the scope of normal entrepreneurial risks and result in temporarily reduced workloads, companies can use measures established in the Personnel Retention in Crisis Act (*Wet personeelsbehoud bij crisis*).

Three requirements must be met for a situation to constitute a crisis within the meaning of this bill: (1) an unforeseeable circumstance, which (2) cannot reasonably be considered a normal entrepreneurial risk, and (3) which is likely to result in the loss of labour capacity. Different instruments are available depending on the nature of the crisis: (a) a circumstance that is universally recognised as a crisis; (b) a circumstance that may be designated as a crisis by the Minister, or (c) a new and emerging crisis.

The bill provides employers greater internal flexibility, potentially safeguarding viable businesses that might otherwise lose valuable employee knowledge and expertise in times of crisis. Employers will have the possibility to fall back on a scheme that can be invoked if certain conditions are met, thereby contributing to a favourable business climate in the Netherlands. For employees, the bill increases the likelihood of retaining their jobs during a crisis and maintaining a significant share of their income. This can also contribute to employee welfare and reduce potential social unrest in the face of a major crisis.

1.2.2 Bill on introducing bereavement leave

This bill (16 May 2024) establishes a legal framework for bereavement leave, entitling employees to (at least) five days of paid leave (based on a full-time position) in situations where a family member with minor children, such as a parent or minor child, has passed away. The entitlement to bereavement leave applies to working parents employed by a regular employer but excludes self-employed persons. Five days of bereavement leave constitute the minimum requirement, though employers may offer more favourable terms to their employees. Many collective agreements regulate bereavement leave, offering employees more favourable treatment. According to the proposal, the hours of bereavement leave cannot reduce the employee's annual leave entitlement.

This bill, if adopted, will be integrated in and become part of Chapter 7 of the Work and Care Act (*Wet Arbeid en Zorg*).

1.2.3 Bill on transfers of undertakings that have declared bankruptcy

The purpose of this bill (27 May 2024) is to enhance the protection of employees in the event of a transfer of undertaking that has declared bankruptcy. It addresses the difference between the protection of employees employed in an undertaking that has declared bankruptcy and employees outside such a situation.

During the parliamentary discussion on the amendment of the Continuity of Enterprises Act I (*Wet Continuïteit Ondernemingen I*), the position of employees employed in an undertaking that has declared bankruptcy and that is being transferred was discussed. Concerns were expressed that the 'pre-pack method' (i.e. the method that was subject of the *FNV/Smallsteps*-case) could potentially lead to the easy dismissal of staff through

bankruptcy dismissal, bypassing normal dismissal procedures and the related level of protection. This issue gained additional attention due to the CJEU's ruling in *FNV/Smallsteps*, which addressed the question whether reliance on the exception of Directive 2001/23/EC is possible in cases of bankruptcy that use the 'pre-pack method'. In response to these concerns, FNV, CNV and the Dutch Bar Association called on the Senate in a letter to make use of the Member State option to extend the Directive's applicability to bankruptcy proceedings, while also leveraging the flexibility provided by the Directive to mitigate certain consequences. This bill responds to this call.

If adopted, the bill would ensure that:

- Employees are transferred to the transferee under equivalent terms or if that is not possible, providing them with the opportunity, under objective and transparent conditions, to enter into an employment relationship with the transferee;
- the existing competitive advantages are reduced as a result of the difference in treatment of employees employed in an undertaking that has declared bankruptcy and employees outside such a situation;
- an additional threshold against the abuse of bankruptcy is introduced, with the aim of circumventing the rules on dismissal protection and thus depriving employees of their rights;
- more legal certainty for transferees is provided in terms of the cost of the transfer, enabling them to extend reasonable offers.

2 Court Rulings

2.1 Interpretation of Directive 2001/23/EC

District Court Den Haag, ECLI:NL:RBDHA:2024:5924, 18 April 2024 (published 02 May 2024)

The present case concerned the interpretation of Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings. This case involved a dispute between a company (plaintiff) and the Netherlands Employee Insurance Agency (UWV) over the allocation of risk for partial disability benefits (*WGA-uitkering*) following the transfer of undertaking from a foundation to the plaintiff. The parties disagreed on whether the transfer was complete or partial, as this would determine which party is responsible for WGA benefits. The plaintiff argued that the transfer had been a partial one, maintaining that the transferor foundation continued its existence and economic activities, implying that the foundation should retain some responsibility for WGA benefits. The UWV, on the other hand, classified the transfer as complete. This determination was based on payroll tax numbers.

The Court assessed whether, from the perspective of the transferor (i.e. the foundation), a complete or partial transfer of undertaking had taken place in terms of social security law. Such an assessment should be based on whether the transferor's (the foundation) economic activities continued after the transfer. The Court determined that UWV should not have based its decision solely on payroll tax numbers. Instead, it should have considered the entire factual situation, including whether the foundation continued its economic activities after the transfer. The Court thus ruled that the UWV's decision was based on an incomplete investigation and lacked sufficient reasoning. It annulled the UWV's decision and ordered a new decision to be issued within eight weeks, which must consider the complete factual situation regarding the continuation of the foundation's economic activities. Additionally, the court instructed UWV to reimburse the plaintiff for court fees and legal costs.

2.2 Interpretation of Article 6(4) European Social Charter

District Court Midden-Nederland, ECLI:NL:RBMNE:2024:2808, 03 May 2024

This case concerned the interpretation of Article 6(4) European Social Charter and involved preliminary relief proceedings (*kort geding*) brought by the public transportation company Arriva against a strike announced by the trade union FNV. Following a recent acquisition by Arriva, the newly joined bus drivers had been working based on a temporary schedule until the summer of 2024. According to the collective agreement, Arriva's works council was required to grant permission for the temporary schedule to take effect. The Arriva works council consented to the temporary schedule. FNV claimed that the temporary schedule resulted in increased workloads and more frequent sick leaves among the bus drivers. Additionally, FNV argued that the implementation of the new bus drivers' schedule had been excessively delayed. Consequently, FNV announced a strike to expedite the establishment of a new schedule. The Court ruled that the strike did not fall under the protection of Article 6(4) of the European Social Charter. It determined that the temporary schedule met the minimum requirements outlined in the collective agreement. In addition, the works council had granted the necessary consent under the collective bargaining agreement for the temporary schedule to be used until the upcoming summer holidays. With the emergency package meeting the minimum requirements of the collective agreements, the unions no longer had a role to play. Based on these findings, the Court concluded that the strike violated the agreements set forth in the collective labour agreement's and was therefore unlawful. As a result, Arriva's request to prohibit the strike scheduled for 06 May 2024 was granted.

2.3 General Data Protection Regulation

Procurator-General of the Supreme Court, ECLI:NL:PHR:2024:416, 12 April 2024 (published 14 May 2024)

This preliminary opinion concerned a request for access to personal data in accordance with Article 15 of the General Data Protection Regulation (GDPR). The applicant, a former judicial officer at the North Holland District Court, resigned following a labour dispute. She suspected that colleagues had made negative comments about her during the conflict and requested access to her personal data from the Council for the Judiciary (CJ) to verify her suspicions. While the North-Holland District Court granted her an overview of her personal data, access to the part that pertained to a request for advice made by the North-Holland District Court to the Council for the Judiciary concerning the employment dispute and the advice provided by the Council for the Judiciary was denied.

The applicant then filed a request under Article 35 of the Implementation Act of the General Data Protection Regulation (UAVG), which was denied by the Rotterdam District Court. This decision was upheld by the Court of Appeal of The Hague.

In cassation, the applicant first challenged the Court of Appeal's decision on the North-Holland District Court's ruling to allow access to only part of her personal data. Additionally, she disputed the Court's right to deny access to the request for advice and the advice of the CJ. She further contested the denial of access to the search conducted during the processing of her access request, as well as the refusal to grant access to the Court's processing register and the deletion of her personal data. The Procurator-General of the Supreme Court considered all of these complaints to be unfounded.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

This case concerned the scope of Directive 1999/70/EG (hereafter: Framework Agreement), more specifically Clauses 2, 3 and 5 of Directive 1999/70/EG.

In case C-59/22, an employee had worked in the Madrid fire prevention service every summer since 1994. In 2007, her employment was recognised as a 'cyclical part-time relationship of indefinite duration'. In 2020, she requested reclassification into an open-ended employment contract and payment of severance pay. She claimed that Spanish law was contrary to Directive 1999/70/EC due to the lack of sanctions for abuse of temporary contracts. Cases C-110/22 and C-159/22 focused on a similar issue. The Court noted that an employee appointed to a post on the basis of an open-ended contract without permanent employment under the Framework Agreement is to be considered as being a fixed-term employment contract (Clauses 2 and 3). This is because the contract can be terminated as soon as an individual passes the competition for the post and is appointed to it for an indefinite period (permanent employment). This situation is also covered by the anti-abuse provision (Clause 5). The provision relates to the 'use of successive fixed-term employment contracts'. However, the utility of the Framework Agreement is jeopardised if a contract of indefinite duration without permanent employment were to be excluded from its scope. This case involved employees who are (in fact) employed under temporary contracts and might find themselves in a precarious employment situation for years. Finally, it seems—subject to verification by national courts—that Spanish law lacks sufficiently effective and deterrent measures to prevent abuse. For instance, in the case of an employee, who had worked for a public institution for 27 years without a competitive process having taken place (case C-59/22), the employee indefinitely remained in an insecure employment situation. The ruling is not expected to have any implications for Dutch labour law, as the legal framework in the Netherlands lacks a concept that is similar to the so-called 'open-ended contract without permanent employment'.

4 Other Relevant Information

4.1 General Agreement 2024-2028 by PVV, VVD, NSC and BBB

On 16 May 2024, the four ruling parties PVV, VVD, NSC and BBB reached a General Agreement that will provide the foundation for developing the Government Programme. The General Agreement outlines ten key priorities that the future government aims to address, many of which may have an (indirect) link with labour market issues: ensuring livelihood security and purchasing power, enhancing control over asylum and migration, improving housing and infrastructure, fostering a sustainable future for agriculture and fishing, ensuring food security and the preservation of nature, promoting energy security as well as climate adaptation, accessible public facilities, good governance and a strong rule of law, national and international security, and solid public finances, a resilient economy and favourable business climate.

On 21 May 2024, the Netherlands Bureau for Economic Policy Analysis (*Centraal Planbureau*) published its (first and incomplete) analysis of the General Agreement.

4.2 Presentation of research report on problems children of migrant workers face

The study (13 May 2024) addresses the situation of children of migrant workers in seven municipalities (The Hague, Rotterdam, Westland, Amsterdam, Eindhoven, Helmond, and

Tilburg). According to the findings, the current situation of children from certain groups of EU migrant workers appears relatively favourable in some aspects, yet concerns persist regarding the vulnerable position in which children may grow up and the lasting impact it may have on them. Consequently, the study makes the following recommendations: recognising the unique position of EU migrant workers; exploring possibilities of providing additional language support; continuing efforts to improve the employment status of parents; implementing culturally sensitive approaches tailored to the working situation of migrant families; initiating trust-building measures and involving the target group; using education as an entry point; promoting access to pre-school education and childcare services; investing in preventive measures rather than addressing symptoms later; reducing health inequalities; facilitating knowledge sharing between municipalities, state authorities and implementing organisations; focusing attention on municipalities/areas with a high concentration of EU labor migrants; and shifting away from patterns of temporariness.

4.3 Comprehensive assessment of job application obligation

The cabinet wants to gain more insights into what works best to help unemployed persons return to work, considering that only little research has taken place to date. No in-depth statements can be made about the obligation to apply for a job. Research into possible alternatives is also lacking. Consequently, the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*) will carry out a comprehensive assessment of the obligation to apply for a job within the Unemployment Act (*Werkloosheidswet*). The study will last four years, with the aim of involving over 100 000 unemployment benefit recipients. The effects on three different groups of the obligation to apply for a job, exemptions from this obligation and alternatives with more room for customisation will be investigated.

4.4 Businesses, organisations, professionals and the government agree on more equal employment opportunities

Many employers already actively promote equal opportunities in the labour market, including through objective recruitment and selection measures. There is a large group of employers, however, which have not yet introduced such measures and need support. Based on an initiative of Minister Van Gennip, a statement was drawn up (27 May 2024) together with employers, employer organisations, HR professionals and recruiters, to take a clear first step towards more equal opportunities on the labour market. Companies and organisations that sign the declaration and undertake or plan to undertake efforts to offer genuinely equal opportunities will receive support from the Equal Opportunities Development Agenda. Within this development agenda, the Ministry of Social Affairs and Employment will closely collaborate with employers' organisations, the Social and Economic Council (*Sociaal-Economische Raad*), HR professionals and recruiters to develop and offer tailored support. Over the coming months, the development agenda will be further elaborated.

Norway

Summary

The government has decided to intervene in a labour market dispute in the public sector and has called for the dispute to be resolved by compulsory arbitration.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

Norwegian law has no concept that is similar to the Spanish one of 'non-permanent employment of indefinite duration'.

An employment relationship in Norway is either permanent or fixed term. The main rule is permanent employment, while fixed-term employment contracts must have a legal basis to be valid. This applies both in the private and municipality sectors, cf. the Working Environment Act (LOV-2005-06-17-62, WEA), as well as in the public sector, cf. the State Employees' Act (LOV-2017-06-16-67, SEA).

Fixed-term employment is only allowed when explicit objective criteria are met, cf. WEA Section 14-9 (2) and 14-10 and SEA Section 9 (1) and 10. The requirements apply to both the first and successive fixed-term employment contracts. In the event of breach of these requirements, the court shall, if requested by the employee, determine whether a permanent employment relationship exists or whether the employment relationship shall continue, and the employee may also claim compensation, cf. WEA Section 14-11 and SEA Section 38.

In addition, there are limitations to the duration of fixed-term employment, whether based on one or several successive employment contracts. The general limitation is three years, and when this limitation is exceeded, the employment relationship shall be deemed as being one of indefinite duration, cf. WEA Section 14-9 (7) and SEA Section 9 (3).

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

4 Other Relevant Information

4.1 Strike in the public sector

From 24 May 2024, the Confederation of Unions for Academics (*Akademikerne*) and the Confederation of Unions for Professionals (*Unio*) organised a strike following the failure of negotiations with the State. The strike first included 1 251 employees, and later increased to twice as many.

On 02 June 2024, the government intervened in the dispute between Unio and the State and called for the conflict to be resolved by compulsory arbitration. This decision was justified because the conflict was deemed to be a danger to life and health due to reduced capacity in the Norwegian National Security Authority (NSM) (see the press release here).

The strike continues in the conflict between Akademikerne and the State.

Poland

Summary

(I) Parliament has passed two bills: (i) a bill extending the special rights of Ukrainian citizens, and (ii) the transposition of the Whistleblowing Directive.

(II) The new legislative initiatives were introduced by the government in connection with the armed conflict in Ukraine relating to (i) periods of employment; (ii) the implementation of CRSD, and (iii) increased duration of maternity leave.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

Three cases were pending before the CJEU concerning employees with indefinite contracts of employment, who had not been employed on a permanent basis, but only periodically, for a specific period of time during the year for several years. This is a specific type of employment relationship used in Spanish law (an employee for an indefinite period of time not employed on a permanent basis). The employees claimed before the Spanish court that they were de facto employees with employment contracts of indefinite duration (without any limitations) and were therefore entitled to the rights applicable under such an employment relationship.

The CJEU, in its ruling of 22 February 2024 (joined cases C 59/22, C 110/22 and C 159/22), ruled that an employee who is employed for an indefinite period but not on a permanent basis shall be treated under EU law as a fixed-term employee. Therefore, Member States should, in accordance with EU law, fight the abuse of contracts of indefinite duration that are not permanent, including the application of measures provided for in EU law which will sanction the abuse of such contracts.

The ruling has no major implications for Polish legislation. Polish regulations clearly limit the period for which fixed-term employment contracts can be concluded with the same employee and the number of such contracts. If these limits are automatically exceeded, the fixed-term employment relationship will be converted into one of indefinite duration, which seems to be a sufficient protective measure in light of the CJEU's remarks. Polish law also does not provide for any exceptions in the form of specific types of employment contracts as is the case in Spanish law.

4 Other Relevant Information

4.1 Draft law on Assistance to Ukrainian Citizens in Connection with the Armed Conflict in that Country

On 23 of May, Parliament passed a bill amending the Law on Assistance to Ukrainian Citizens in Connection with the Armed Conflict in that Country. The Act was submitted to the president for signature.

After the president signs the Act, the changes will enter into force on 01 July 2024.

For more information, see the April 2024 Flash Report.

4.2 Draft law on whistleblowers

On 23 May 2024, the Sejm passed the Act on the Protection of Whistleblowers implementing the European Parliament and Council (EU) Directive 2019/1937 of 23 October 2019 on the protection of whistleblowers. The bill will now be submitted to the senate.

The provisions of the Act are expected to enter into force three months after they are published in the Journal of Laws.

For more information, see April 2024 Flash Report.

Portugal

Summary

Analysis of a ruling of the Appeal Court of Oporto on grounds for exercising the right to oppose a transfer of undertaking under the TUPE regime.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Transfer of economic unit

Appeal Court of Oporto, Process No. 2079/21.2T8VNG.P1, 18 April 2024

In the present judgment, the Appeal Court of Oporto reviewed whether the employee's objection to the transfer of his employment contract was lawful.

Article 286-A (1) of the Portuguese Labour Code ("PLC") (Law No. 14/2018, of 19 March) enshrines the employee's right to object to the transfer of his/her employment contract under the framework of the TUPE

> *"when the transfer may cause him/her serious harm, namely due to a clear lack of solvency or difficult financial situation of the transferee or if the latter's work organisation policy does not inspire trust"*.

In case of objection on the part of the employee, the transfer of the employee's position specified in his/her employment contract shall be prevented, and the relationship with the transferor shall be maintained (Article 286-A (2) of PLC).

The interpretation of paragraph 1, Article 286-A has not been uniform, resulting in two different understandings. According to one interpretation, for the employee to be able to exercise the right to object, there must be a potential for serious harm resulting from the transfer. This harm may result from, among others, *i)* a clear lack of solvency or difficult financial situation of the acquirer or *ii)* lack of confidence in the transferee's organisational policy. Another interpretation posits that the legal provision enshrines two distinct and autonomous grounds for the employee to object to the transfer of the employee's position specified in his/her employment contract: the first is based on the potential for serious harm to the employee, such as a clear lack of solvency or difficult financial situation of the acquirer (although actual serious harm is not necessarily required, only a prognostic judgment about potential serious harm in the future); the second is based on the employee's lack of trust in the transferee's work organisation policy.

There is also a divergence in case law about whether the employee's lack of trust in the transferee's work organisation policy is or is not a matter that can be analysed by the court (and whether it should be based on objective and reasonable criteria).

In this ruling, the Court confirmed that

> *"even if the employee's distrust of the transferee's work organisation policy is based on a prognostic judgment on the part of the employee, on subjective and indeterminate content, this unreliability can to some extent be verified by analysing the facts invoked, from which this lack of trust may result, in the light of an objective and reasonable criterion, by appealing to the perspective of a*

> *typical employee, who has the necessary knowledge and in the concrete situation of the employee in question".*

In cases where there is no contractual link or collaboration between the transferor and transferee, the transferor will often not be in a position to provide relevant information on, for instance, measures planned for the employees affected by the transfer, as required by Portuguese law. In that case, the transferor will identify the potential transferee and inform employees that their employment contract will continue with the new employer.

According to the Court, the grounds for an employee's right to object must consider the information provided or withheld, particularly with regard to the measures planned by the potential transferee concerning the employees affected by the transfer.

In the present case, the Court ruled that the employee had validly objected to the transfer on the grounds that he trusted his current employer (considering that his decision to enter into an employment contract was based on company's good reputation and his confidence that it would fulfil its obligations as an employer, given their longstanding employment relationship). The employee did not trust the new company's work organisation policy and its ability to fulfil its contractual obligations (based on the fact that it is a company that the employee was unfamiliar with and the only information provided to him had been the identity of the potential transferee).

Although Directive 2001/23/EC does not expressly stipulate the right to object to the transfer, CJEU case law has repeatedly recognised this right. It is therefore important to take the interpretation of the Portuguese courts on Article 286-A of PLC into account, as this rule establishes the grounds for the exercise of the right to object to the transfer of his/her position in the undertaking, establishment or economic unit.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The joined cases concerned the interpretation of Clauses 2, 3 and 5 of the Framework Agreement on Fixed-term Work, concluded on 18 March 1999, which is annexed to Directive 1999/70/EC of 28 June 1999 (hereinafter, 'Framework Agreement').

Firstly, the CJEU reviewed whether Clauses 2 and 3 of the Framework Agreement must be interpreted as meaning that a worker who holds a non-permanent contract of indefinite duration is to be considered a fixed-term worker for this purpose.

According to the CJEU, the scope of Clause 2(1) of the Framework Agreement is broad, and generally covers

> *"fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State".*

Furthermore, the CJEU asserted that *'fixed-term workers'* encompasses all workers without drawing a distinction between whether their employer is engaged in the public or private, sector, and regardless of the classification of their contract under domestic law.

The CJEU considered that in the context of the public sector, the concept of a

> *"worker having a non-permanent contract of indefinite duration"* constitutes a judicial creation and that it must be distinguished from the concept of *"permanent worker".*

Taking into account that the duration of such a contract is limited by the occurrence of a specific event, namely the definitive awarding of the post occupied by the respective worker to the person who successfully passed the competitive exam organised by the administration to fill that post, the CJEU concluded that such contract of employment must be considered a fixed-term contract within the meaning of the Framework Agreement, and therefore, falls within the scope of such an agreement.

Furthermore, the CJEU analysed whether the expression

> *"use of successive fixed-term employment contracts or relationships"*

in Clause 5 of the Framework Agreement must be interpreted as encompassing workers who hold a single, non-permanent contract of indefinite duration with the administration concerned, where that contract does not set a term but is terminated when the respective post is awarded to a candidate following the publication of a vacancy notice, but when that vacancy notice has not been published within the period prescribed by that administration.

Regarding this question, the CJEU ruled that

> *"in the present case, since, because the administration concerned failed to organise within the relevant deadline a selection procedure seeking definitively to fill the post occupied by a worker having a non-permanent contract of indefinite duration, the automatic extensions of that temporary contract may be treated like renewals and, consequently, like the conclusion of separate fixed-term contracts. It follows that the situations at issue (…) are not characterised by the conclusion of a single contract, but by the conclusion of contracts which may indeed be classified as 'successive' within the meaning of Clause 5 of the Framework Agreement, which it is for the referring court to verify".*

In addition, the CJEU stated that

> *"Clause 5(1)(a) to (c) of the Framework Agreement must be interpreted as precluding national legislation which does not provide for any of the measures referred to in that provision or an 'equivalent legal measure', within the meaning of that provision, in order to prevent the abuse of non-permanent contracts of indefinite duration"*

as well as

> *"Clause 5 of the Framework Agreement must be interpreted as precluding national legislation which provides for the payment of limited compensation, equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration successively extended, where the payment of that end-of-contract compensation is independent of any consideration relating to the lawful or abusive nature of the use of those contracts".*

Thus, in the present case, the CJEU concluded that

> *"Clause 5 of the Framework Agreement must be interpreted as meaning that, in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive fixed-term contracts, including non-permanent contracts of indefinite*

> *duration which have been extended successively, the conversion of those temporary contracts into permanent contracts is capable of constituting such a measure. It is, as the case may be, for the national court to amend the established national case-law if it is based on an interpretation of the provisions of national law, including constitutional provisions, which is incompatible with the objectives of Directive 1999/70 and, in particular, of Clause 5 of the Framework Agreement".*

In Portugal, there is no concept similar to the concept of *"non-permanent contract of indefinite duration"*, and therefore, this CJEU ruling does not have direct implications for Portuguese law. Nevertheless, the CJEU's understanding, as presented in this ruling, may be relevant to assess whether the Portuguese law on fixed-term contracts is generally aligned with Clause 5 of the Framework Agreement.

4 Other Relevant Information

Nothing to report.

Romania

Summary

The High Court of Cassation and Justice has clarified the method for calculating the notice period in the dismissal of employees for reasons not attributable to them.

1 National Legislation

Nothing to report.

2 Court Rulings

2.1 Notice period

Court of Cassation and Justice, No. 8, 20 May 2024

According to Article 75 of the Labour Code, workers dismissed for reasons not attributable to them are entitled to a notice period of 20 days. There has been a long-standing inconsistent practice of how this period is calculated, specifically whether the day the notice period is communicated, and the last day of the period are included in the calculation.

Some courts considered Article 2553 of the Civil Code applicable, which states that

> *"when the term is set in days, the first and last days of the term are not counted."*

This means that the calculation of the notice period follows the free days system, where neither the first day (dies ad quo) nor the last day of the term (dies ad quem) are counted.

Other courts deemed that the Civil Code was not applicable, as the notice period is based on 'working days', while the Civil Code only deals with 'calendar days'. Applying the Civil Code's provisions would effectively extend the notice period beyond the Labour Code's provisions.

The High Court of Cassation and Justice, through an appeal in the interest of the law (a decision binding on all courts in the country), ruled that Article 2553 of the Civil Code is not applicable. The notice period begins the day after the notification is communicated and ends on the last day of the period (Decision No. 8 of 20 May 2024).

This is not the first decision of the High Court of Cassation and Justice on the notice period issued in an appeal in the interest of the law. In Decision No. 8/2024, the Court held that as long as the notice period was actually granted, the fact that the employer omitted to include it in the dismissal decision does not render the dismissal null. However, if the notice period had not been granted, the penalty is the nullity of the dismissal, not merely the payment of damages.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

By regulating the use of fixed-term employment contracts, the Romanian Labour Code has introduced all three conditions established by Clause 5 of the Framework Agreement on Fixed-term Work:

- requirement for an objective reason, among those explicitly listed in Article 83 of the Labour Code, not only for the renewal of a fixed-term contract, but also for the initial conclusion of such a contract;
- providing for a maximum duration of the contract of 36 months (Article 84 (1) of the Labour Code);
- establishment of a maximum number of three contracts that can be concluded successively (Article 82 (4) of the Labour Code).

Failure to comply with any of these conditions results in the nullity of the contractual clause on the fixed term, with the contract consequently being considered as having been concluded for an indefinite period.

However, the Romanian legislator does not always seem to apply these rules consistently. For example, it amended the provisions of Government Ordinance No. 42/2004 on the organisation of veterinary and food safety activities, following the decision of the Court of Justice of the European Union in case C 614/15. The initial text of the Romanian law provided that in this sector of activity, fixed-term employment contracts concluded for the maximum period established in labour legislation may be extended upon agreement of the parties, as long as the conditions that led to their conclusion persist, until new employment contracts are concluded following a selection procedure to definitively fill the post occupied. The Court of Justice of the European Union ruled that the Romanian provision was inconsistent with Clause 5 of the Directive. As a result, the legal text was amended by Law 291/2020, which stipulates that contractual employees employed for a fixed term, shall be employed under a contract of indefinite duration upon completion of a consecutive 36-month period, if the conditions that led to the conclusion of the fixed-term employment contracts persist.

Some norms that deviate from the rules established in the Labour Code in the application of the Directive's provisions still remain in force. For example, Emergency Ordinance No. 48/2016 (which amended Government Ordinance No. 21/2007 on performance and concert institutions and companies, as well as the conduct of artistic management activities) in Article 13 (4) and (5) allows for the conclusion of fixed-term contracts without any restrictions and without the establishment of measures to prevent the abusive use of fixed-term contracts. This derogates both from the provisions on the maximum number of fixed-term contracts that can be concluded successively and from the provisions on the maximum duration of the contract.

In conclusion, the Labour Code is consistent with the provisions of Directive 1999/70/EC as interpreted by the decision of the Court of Justice in cases C-59/22, C-110/22, and C-159/22. However, the decision of the Court of Justice of the European Union may prove useful to Romanian courts in the application of secondary legislation, which sometimes derogates from the rules of the Labour Code.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

(I) Two government regulations have been adopted.

(II) The EU Directive (EU) 2022/431 of the European Parliament and of the Council of 09 March 2022 on the protection of workers from risks related to the exposure to carcinogens or mutagens at work, has been transposed into national law.

1 National Legislation

1.1 Safety and health protection at work

The Government of the Slovak Republic adopted two regulations on 22 May 2024:

- Regulation of the Government of the Slovak Republic No. 121/2024 Coll. (Collection of laws) on the protection of employees' health from risks related to the exposure to carcinogenic factors, mutagenic factors or reproductively toxic factors at work;
- Regulation of the Government of the Slovak Republic No. 122/2024 Coll. amending the Regulation of the Government of the Slovak Republic No. 355/2006 Coll. on the protection of employees from risks related to the exposure to chemical factors at work, as amended.

By adopting these two regulations, the Slovak Republic transposes 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 risks related to the exposure to carcinogens or mutagens at work.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

The Labour Code (Act No. 311/2011 Collection of Laws – 'Coll') as amended is the main legal source for fixed-term contracts. The Labour Code regulates labour law relations in the private and in the public sector. More information is available here.

Act No. 552/2003 Coll. on the performance of work in the public interest (i.e. employment in the public sector) does not regulate fixed-term employment, and hence the Labour Code applies.

Act No. 55/2017 Coll. on civil service, as amended (*state service*), applies to civil servants.

In Slovak legislation, the concept "*non-permanent worker for an indefinite period*" ("*non-permanent worker with a contract of indefinite duration"*) does not exist.

According to Article 48, paragraph 1 of the Labour Code, the employment relationship is agreed for an indefinite period, if its duration was not explicitly specified in the employment contract, or if the legal conditions for concluding an employment

relationship for a fixed term have not been met. The employment relationship is concluded for an indefinite period even if the fixed-term employment relationship was not agreed in writing.

(According to Article 40, paragraph 9 of the Labour Code for the purposes of this Act, a comparable employee shall be an employee, who has concluded an employment relationship for indefinite duration and a determined weekly working time of the same employer or an employer pursuant to Article 58, who performs or would perform the same type of work or a similar type of work, taking the employee's qualifications and professional experience into consideration.)

A fixed-term employment relationship can be agreed for a maximum duration of two years. It can be extended or renewed no more than twice within this two-year period (Article 48 paragraph 2). A renewed fixed-term employment relationship is one established before the end of a six-month period following the conclusion of the previous fixed-term employment relationship between the same parties (Article 48 paragraph 3).

According to Article 48, paragraph 4, a further extension or renewal of the fixed-term employment relationship up to two years or beyond two years is only possible in case of:

a) substitution of an employee who is on maternity leave, paternity leave, parental leave, leave immediately following maternity/paternity/parental leave, temporary incapacity for work or of an employee who is released for an extended period to perform a public or trade union function;

b) the performance of work that requires a significant increase in the number of employees for a temporary period not exceeding eight months within a calendar year,

c) performance of work that depends on changes in seasons, is repeated every year and do not exceed eight months within a calendar year (seasonal work),

d) performance of work agreed in the collective agreement.

The reason for an extension or renewal of a fixed-term employment relationship according to paragraph 4 shall be stated in the employment contract (Article 48 paragraph 5).

According to Article 48, paragraph 6, a further extension or renewal of the employment relationship for a fixed term of up to two years or beyond two years of a university teacher or a creative employee in the science, research and development sector is also possible if an objective reason exists that arises from the nature of the activity of a university teacher or creative employee in the science, research and development sector as established in a special regulation.

Labour Code provisions on fixed-term work do not apply to the employment of civil servants, however, given the specific conditions under which such staff perform their work, there is no risk of abusive use of fixed-term work.

Act No. 55/2017 Coll. on civil service, as amended (*state service*), applies to civil service.

There are two types of civil service:

- permanent civil service (Article 34 of the Act - permanent civil service is civil service for an indefinite period of time),
- temporary civil service (Article 36 paragraph 1 of the Act - temporary civil service is civil service for a specific period of time).

The Act includes different regulations for the length of temporary civil service in Article 37 letters a/ - k/. For example, temporary civil service of:

- a civil servant in a public function lasts for the period of performance of this function (letter a/),
- an expert who is temporarily needed for the performance of civil service tasks lasts for the period agreed in the service contract (letter f/).

In compliance with Article 40, paragraph 1 of the Act, the service office shall publish a vacancy or a temporarily vacant civil service position in the respective service office and specify the selection procedure. According to paragraph 2, the service office can announce vacancies and their corresponding selection procedures for occupied civil servant positions, provided there is clarity that such positions will either be vacant temporarily or become vacant as a civil servant position.

Article 36 paragraph 3 letters a/ - e/ of the Act specifies under what circumstances temporary civil service positions may be established, even in the absence of a selection procedure. Additionally, Article 36, paragraph 4 letters a/ - c/ outlines the scenarios wherein admission to temporary civil service is contingent solely on the basis of a selection procedure.

Considering the legal arrangement in the cited provisions, Slovak regulations seem to be in line with the CJEU ruling.

In conclusion, two court decisions related to fixed-term employment are worth mentioning.

Firstly, according to the Judgment of the *Supreme Court of the Slovak Republic of 30 November 2022, file No. 9Cdo/273/2020* (see 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 Employment. A certain period of time *(fixed term)*). Collective agreement (point 67, page 35), Article 48 paragraph 4 letter d) of the Labour Code requires specific types of work for which it is possible to extend or renew a fixed-term employment relationship to be agreed in the collective agreement.

If the employer only cites the fact that the employee performs work in line with the collective agreement as the reason for re-extending the employment relationship, a material reason for the temporary nature of such a fixed-term agreement is deemed to be lacking.

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

Article 48

Fixed-term employment relationship

(4) A further extension or renewal of the fixed-term employment relationship to two years or beyond two years may only be agreed for the following reasons or

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

Secondly, in the *CJEU case C-715/20, 20 February 2024, X (Lack of reasons for termination)*, the Grand Chamber decided:

Clause 4 of the Framework Agreement on Fixed-term Work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by ETUC, UNICE and CEEP must be interpreted as precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration. A national court hearing of the dispute between individuals is required, where it is not possible for the court to interpret the applicable national law in a way that is consistent with that clause, to ensure, within its jurisdiction, the judicial protection that individuals derive from Article 47 of the Charter of Fundamental Rights of the European Union and to

guarantee the full effectiveness of that article by disapplying, in so far as necessary, any contrary provision of national law.

The legal regulation of the termination of employment by the employer by notice is specified in the Labour Code (Act No. 311/2001 Coll. Labour Code, as amended) in accordance with the relevant judgment of the Court. In case of termination by notice by the employer, the legal regulation does not distinguish between an employment relationship of indefinite duration or one for a fixed term.

According to Article 61, paragraph 1 of the Labour Code, the employment relationship can be terminated by notice by both the employer and the employee. The notice must be made in writing and delivered to the other party, otherwise it is invalid. According to paragraph 2, the employer may only give notice to the employee for the reasons established in this Act. The reason for the notice must be factually defined in such a way that it cannot be confused with another reason, otherwise the notice is invalid. The reason for notice cannot be changed subsequently.

According to Article 63 paragraph 1 of the Labour Code, the employer may only give the employee notice for the reasons listed in letters a) to e), regardless whether it is an employment relationship of indefinite duration or a fixed-term employment relationship.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

Several strikes are continuing in Slovenia. However, two strike agreements have been concluded, followed by the termination or freezing of the strike.

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

This case has no significant implications for Slovenian law, since there is no comparable employment relationship/status in Slovenia as the one dealt with in the present case; there is no 'non-permanent contract of indefinite duration' in Slovenia.

The general labour regulations on fixed-term contracts also apply in the public sector (Employment Relationships Act ('*Zakon o delovnih razmerjih (ZDR-1)*', OJ RS 21/13 et subseq.), in particular those providing for measures preventing and penalising the abuse of (successive) fixed-term contracts. The conversion into an employment contract of indefinite duration is possible in the public sector according to the same rules applicable in the private sector (Article 56 of the ZDR-1): if a fixed-term employment contract is concluded contrary to the legislation or a collective agreement, or if the worker continues to perform work after the expiry of a fixed-term contract, it shall be presumed that the worker has concluded an employment contract of indefinite duration.

4 Other Relevant Information

4.1 Strike wave

Several strikes are currently ongoing in Slovenia. The strike of medical doctors, organised by the trade union FIDES, which started in mid-January 2024, is still ongoing (see also February 2024 and March 2024 Flash Reports). The staff of Slovenia's administrative units went on an indefinite strike effective 15 May 2024; the strike is motivated by a shortage of staff and demands for higher salaries; the list of essential services that must be performed during the strike has been issued by the government, as well as a list of administrative units that are striking and their mode of striking/working. The customs officers' strike, which started in May 2023, was 'frozen' in mid-May 2024 – the government and the trade union of customs officers concluded an agreement to meet the demands ('*Sporazum o načinu reševanja stavkovnih zahtev*' (OJ RS No. 44/2024, 31 May2024, p. 4280-4281); the main issue at stake concerns the wages they agreed will be negotiated within the uniform framework for the reform of the public sector pay system (which is ongoing), whereby the strike has been frozen until 13 September 2024 (if negotiations within the uniform framework do not succeed until that date, the strike will continue). Moreover, the strike at the public broadcasting

institution Radiotelevizija Slovenija (RTV Slovenija) has also ended – the management and trade unions concluded an agreement to meet the demands (‘*Sporazum o reševanju stavkovnih zahtev’* (OJ RS No 43/2024, 24 May2024, p. 3998-3999).

Annex No. 2 to the collective agreement for agriculture and the food industry of Slovenia has been concluded and published in the OJ (‘*Aneks št. 2 h Kolektivni pogodbi za kmetijstvo in živilsko industrijo Slovenije*’, OJ RS No. 43/2024, 24 May2024, p. 3999-4001). It concerned adjustments of various payments as well as a minimal reform of the pay system (the parties agreed that the seniority supplement will gradually, over a period of five years, be transformed and included into the basic pay).

Annex No. 18 to the collective agreement for the publishing and bookselling sector has been concluded and published in the OJ (*Aneks št. 18 k Tarifni prilogi h Kolektivni pogodbi časopisno-informativne, založniške in knjigotrške dejavnosti’*, OJ RS No. 38/2024, 07 May 2024, 3631-3632).

Spain

Summary

The government has improved the right to breastfeeding breaks following the repeal of a similar provision by Parliament in January.

1 National Legislation

1.1 Work-life balance

As noted in a previous Flash Report (06/2023), Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work-life Balance for Parents and Carers was transposed through a provision of 28 June. The Labour Code and the Basic Statute of Public Employees (Civil Servants Act) have been amended to introduce a new unpaid parental leave right of eight weeks, which can be taken until the child reaches the age of eight years. This parental leave is non-transferable and can be taken in parts. The worker has the flexibility to choose between full-time or part-time leave.

Other rights have also been recognised, but the government has deemed the transposition to be incomplete. On 19 December 2023, a new Royal Decree Law amended Article 37 (4) of the Labour Code to allow for the accumulation of breastfeeding breaks on full working days. Accordingly, workers (both women and men) have the right to a one-hour break to feed their infant until the child turns nine months old. Previously, converting these breaks into full working days (approximately one month of paid leave) required an agreement through collective bargaining or the employment contract.

This Royal Decree Law of December 2023 (Flash Report 12/2023) granted workers this accumulation right without requiring an agreement, explicitly linking this right to Directive 2019/1158. A Royal Decree Law is a provision that is justified in cases of urgent need, and Parliament must ratify it within 30 days. However, for the first time in Spanish history, Parliament has not ratified this Royal Decree Law, resulting in the abolition of the provision (Flash 01/2024).

In May 2024, the government approved another Royal Decree Law with a similar content, though its ratification is expected this time around.

1.2 Regulated professions

Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adopting a new regulation of professions was transposed in Spain by Royal Decree 472/2021. This Royal Decree has now been amended to introduce a new requirement: deontological codes must be assessed by the Spanish antitrust agency prior to their approval.

1.3 Employment services

In accordance with the new Employment Act of 2023, a new set of regulations is required for its implementation. In May, a Royal Decree has been issued to establish the Common Portfolio of Services of the National Employment System. This portfolio comprises a set of common services whose continuous provision must be ensured across the entire national territory by all public employment services, in every region and municipality, either directly or through collaboration with other entities. The aim is to enhance the employment system's effectiveness and uphold the principle of equality throughout Spain.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

This ruling will undoubtedly have implications for Spain. The application of EU law to labour relationships in the public sector has been challenging. In the private sector, irregular (abusive) fixed-term contracts are converted into permanent ones. However, this rule is difficult to apply in public administration, where permanent employment requires passing a selection process to uphold the principles of equality, merit and capacity established in the Spanish Constitution.

Therefore, the use of successive fixed-term contracts in the public sector does not result in the conversion into a permanent employment relationship. Instead, decades ago, the Supreme Court established a new status referred to as `non-permanent contract of indefinite duration´ (*trabajador indefinido no fijo de plantilla*). Irregular/successive fixed-term contracts do not end on the originally agreed date but only once the position is filled by a permanent worker who has passed the selection process. Consequently, the initial worker could remain in the job for years. This status is not a recognised contract type and lacks legal regulation, and only exists when a court declares that the fixed-term contract with a public administration is abusive. This situation does not arise in the private sector, where an invalid fixed-term contract automatically converts into a permanent one.

Fixed-term contracts in the public sector have raised a number of issues in Spain. The CJEU applies the Framework Agreement to prevent the abusive use of temporary employment in various contexts. Spain has implemented several measures to comply with this case law. For instance, Additional Provision 34 of Law 3/2017 holds the relevant bodies in each public administration accountable for non-compliance with the laws governing fixed-term employment contracts.

The Supreme Court also grants severance pay at the end of a `non-permanent contract of indefinite duration´. In addition, and to prevent the abusive extension of some contracts, Royal Decree Law 14/2021, 06 July, introduced three main rules:

1. Replacement contracts cannot last longer than three years.

2. If the replacement contract exceeds a period of three years, the worker is entitled to severance pay at the end of the contract (same amount as for dismissals on objective grounds).

3. For vacancy-based interim contracts, the public administration must initiate the selection process once the interim worker has occupied the post for three years.

Royal Decree Law 12/2022 underlines aims that are related to health workers. This is a sensitive issue in Spain because the Autonomous Communities are responsible for organising their health services, hence the government must conduct negotiations in advance to adopt measures and prevent political conflict.

However, this is a complex issue in Spain. Access to permanent civil service is not decided freely by the public administration, but requires passing a competitive exam. These exams can be rigorous and may take years to prepare for (e.g. judges, tax

inspectors, police, etc.). In the past, fixed-term employment contracts were occasionally used to circumvent the application of these exams, either intentionally or unintentionally, leading to situations of abuse with temporary workers becoming permanent employees without passing the relevant exam.

The competitive exam ensures compliance with the merit and ability requirements set out in Article 103 (3) of the Spanish Constitution for accessing permanent civil service. These requirements are compromised when a temporary worker becomes a permanent employee due to an irregularity in the employment contract. This situation resulted in the creation of the `non-permanent contract of indefinite duration´. Such contracts prevent the misuse of fixed-term contracts as a `back door´ to permanent employment in public administrations, which would be unconstitutional, not in the public interest, and unfair to those preparing for the competitive exam (they would not have a fair opportunity because others take advantage of an irregularity). In essence, while addressing the abusive nature of fixed-term contracts, care must be taken to not create further abuses that put others at a disadvantage.

The government and courts have tried to balance all interests involved, but the CJEU has consistently focused on the abusive nature of fixed-term employment contracts and suggests that converting these contracts into permanent ones is the preferred solution under EU law. As mentioned earlier, this is not straightforward in the Spanish legal system.

The government is attempting to modify the competitive exams to include a merit-based approach, giving significant weight to the time served as a temporary worker and reducing the traditional exam's relevance. However, this approach has been contentious, and a claim has already been filed before the Constitutional Court to assess the constitutionality of this eased path to permanent civil service.

Achieving compliance with both labour law and EU law in public sector employment represents a significant challenge in Spain. The CJEU's preference for a conversion into a permanent employment position clashes with the Spanish Constitution's emphasis on meritocratic selection. While the Spanish government and courts have yet to identify alternative "effective measures" to prevent the abuse of successive fixed-term contracts, efforts to reconcile these competing priorities are likely to continue.

For instance, a recent Supreme Court ruling of 29 April states that the principle of equality does not mandate that permanent civil servants and workers with a "non-permanent contract of indefinite duration" enjoy the same rights, as some differences are justified. Specifically, the Supreme Court allows collective agreements to limit the right to apply to permanent civil servants for relocation, excluding those with a `non-permanent contract of indefinite duration´. This ruling explicitly refers to the CJEU's present ruling. The Supreme Court asserts that this CJEU ruling does not require an automatic conversion of these `non-permanent contracts of indefinite duration´ into permanent contracts, as such a conversion would not be permissible under the Constitution, nor does it require the granting to them of the same rights.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

(I) Sweden will soon join Protocol 16 to the ECHR.

(II) A Polish company has been successful in a dispute before the Arbitration Board for Labour Market Insurances.

(III) Swedish industrial relations are more strained than usual, with two ongoing conflicts, which is uncommon for Sweden.

1 National Legislation

1.1 Sweden joins Protocol No. 16 to the ECHR

On 23 May, the Swedish government decided to propose to Parliament that Sweden join Protocol No. 16 to the ECHR. This will allow Swedish Supreme Courts (i.e. the Labour Court) to request advisory opinions from the ECtHR. In line with the Swedish legislative procedure, the proposal has now been referred to the legislative council.

2 Court Rulings

2.1 Arbitration Court for Labour Market Insurance

A podcast has reported that a Polish company has been successful in a dispute before the Arbitration Board for Labour Market Insurances. The Polish company claimed that it should not be paying pension fees in Sweden as it was already paying equivalent fees in Poland in accordance with EU Directive 98/49. Apparently, the arbitration board decided in favour of the Polish company, and the EU Directive was decisive for the outcome. As arbitral awards are not published unless the parties agree to, no information on the case is available.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

In its judgment, the CJEU clarified the notion of successive fixed-term employment contracts and held that several aspects of Spanish employment recruitment procedures in the public sector are to be considered abuse of non-permanent contracts according to the EU Directive.

From a Swedish legal perspective, the judgment may have implications for at least two reasons. First, the Swedish employment protection act only contains limitations to the use of fixed-term contracts for individuals. In the CJEU judgment, the conversion of part-time contracts into permanent ones by publicly announcing a permanent competitive position is also precluded by Clause 5 of the Framework Agreement. This particular aspect of the judgment may have implications for how permanent positions, e.g. at Swedish universities, are announced.

Second, collective agreements may derogate from Swedish regulations designed to prevent the abuse of fixed-time contracts, as outlined in Section 2 b of the Employment Protection Act. While Swedish collective agreements must comply with the Directive, they can include derogations from the general protection rules in different collective

agreements. For example, in the public sector, employment contracts known as `public fixed-time contracts´ (`*statlig visstidsanställning*´) can be concluded, which may be concluded for two years. This contrasts with the general rules in Section 5 a of the Employment Protection Act, which prescribes the conversion of a fixed-term contract into a permanent one if it has continued for more than 12 months within a five-year period.

4 Other Relevant Information

4.1 Tesla's industrial relations

Several industrial actions are ongoing in the Swedish labour market. As has been reported in previous Flash Reports, strikes at the car manufacturer Tesla have been ongoing since October 2023. The striking trade union has been joined by other trade unions in the Nordic countries. In May, it was reported that the conflict has escalated, with the largest trade union in Sweden, the private sector, white-collar organisation `*Unionen*´, deciding to take sympathy actions against Tesla.

It has also been reported that Tesla is flying in strike-breakers to its Swedish worksites from other European countries to undermine the counterparty's industrial actions. The strike-related activity was uncovered by journalists using the public register on ongoing posting of workers to Sweden available through the Work Environment Authority.

The strikebreaking activity has led the Swedish Left Party (*Vänsterpartiet*) to propose a `Lex Tesla´ aimed at prohibiting strikebreaking at EU level.

4.2 Healthcare industrial relations

Industrial relations in the healthcare industry are strained, as the Health Union (`*Vårdförbundet*´) has called for a reduction in working hours due to staffing shortages. The union initiated an industrial action on 25 April by blocking overtime work. A strike has been announced from 04 June. The healthcare sector is organised regionally in Sweden, and some of the regions plan to restrict the conflict considering it is an essential service. In Sweden, there are no explicit rules restricting strikes in essential services. Instead, the labour market relies on the social partners to take responsibility together. Reportedly, the trade union has called off some of its announced strike actions due to the risks implied for patients.

4.3 Labour law in EU election

As mentioned above, Tesla's strikebreaking activity has led the Swedish Left Party (*Vänsterpartiet*) to propose a `Lex Tesla´ aimed at prohibiting strikebreaking at the EU level. The focus of the upcoming EU elections is on EU labour law. Several parties have proposals for revising the Working Time Directive as a consequence of the EU Commission's scrutiny of the Swedish practice on daily rest rules.

United Kingdom

Summary

(I) The Code of Practice (Dismissal and Re-engagement) was presented before Parliament.

(II) The government is consulting on changes to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and abolishing European Work Councils (EWCs).

1 National Legislation

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings

3.1 Fixed-term contracts

CJEU joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid

Joined cases C-59/22, C-110/22 and C-159/22, 22 February 2024, *Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid* raise a number of very specific issues that are peculiar to the Spanish system and are not relevant to the UK. In respect of the question of abuse, under UK law, there is a requirement for all workers in the public and private sectors for any renewal of a fixed-term contract beyond four years to become a permanent contract. This is evident in Regulation 8 of the Fixed-term Work Regulations. These provide:

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

(ii) where that contract has not been renewed, at the time when it was entered into.

(3) The date referred to in paragraph (2) is whichever is the later of—

(a) the date on which the contract mentioned in paragraph (1)(a) was entered into or last renewed, and

(b) the date on which the employee acquired four years' continuous employment.

However, in reality, even an employee under a fixed-term contract can be dismissed, provided certain procedures are satisfied and so there is no such thing as 'permanence'.

4 Other Relevant Information

4.1 Elections

An election has been called for 04 July and a number of measures outlined here may therefore not come to fruition.

4.2 Code of Practice (Dismissal and Re-engagement)

The Code of Practice (Dismissal and Re-engagement) Order 2024 (*SI 2024/708*) was presented before Parliament on 28 May 2024, bringing into force the statutory Code of Practice on dismissal and re-engagement on 18 July 2024 (i.e. after the election). The draft Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment of Schedule A2) Order 2024, which would allow an uplift or reduction in compensation if the Code is not followed was also expected to come into force on 18 July 2024.

4.3 Government consultation on changes to TUPE and abolishing EWCs

The government is consulting on changes to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and abolishing European Work Councils (EWCs). In respect of TUPE, the government asserts:

In our consultation on [earlier reforms], we asked respondents for suggestions of other changes which could be made to the TUPE regulations. Several respondents suggested that reform or clarification is needed in the following areas:

- the application of TUPE to workers
- the application of TUPE where a business is transferred to multiple transferees

In response to this, the government is now consulting on proposals to reaffirm that TUPE only applies to employees and to prevent complex contract 'splitting' in cases where a business is divided between multiple transferees.

In both these areas, case law has introduced uncertainty that the government is seeking to resolve. These reforms will:

- reduce the complexity of the TUPE transfer process for employers and employees;
- reduce the administrative burden and costs of the TUPE regulations for businesses;
- provide additional clarity for both employers and employees.

In respect of EWCs, the government asserts:

Since the UK's departure from the EU, there has been a series of legal cases brought by companies who have sought to disband their legacy EWCs in the UK. While the courts have upheld the position that EWCs that existed prior to EU exit should continue to operate, there is an ongoing cost to businesses of having to operate an EWC in the UK in addition to a parallel one in the EU to meet their obligations under EU law. Additionally, following the UK's departure from the EU, the government legislated to prevent the establishment of new EWCs in the UK.

We therefore propose to remove this legacy of the UK's membership of the EU by repealing the legal framework for EWCs in the UK, which will include a repeal of the current requirement to maintain existing EWCs. We believe that existing structures can effectively represent workers at company level in the absence of an EWC, such as unions or other employee representatives.

1. Do you agree or disagree that the government should legislate to abolish the legal framework for EWCs?
2. Are there any other options the government should consider instead of abolishing the legal framework for EWCs?
3. We have analysed the potential impacts of this proposal in the annex of this consultation. Are you aware of any other evidence to inform our analysis of impacts?

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