

XVIIIth Meeting of European Labour Court Judges

11-12 October 2010

Jerusalem, Israel

Questionnaire

I. EMPLOYMENT PROTECTION LEGISLATION

II. ECONOMIC CRISIS AND CASE LAW OF LABOUR COURTS

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To reply to the questionnaire, all the participants are kindly asked to provide:

- Legal references (number of articles of the law) and
- Any interesting court cases to illustrate the issue.

I. EMPLOYMENT PROTECTION LEGISLATION (EPL)

Source and scope of regulation

1. **Source of regulation** – What is the main law (title and date of adoption) regulating employment contracts and dismissals (Please provide a Web-link, Word/PDF version, its translation in English or French).
2. **Scope of legislation** – What categories of workers are excluded from the regulation? (e.g. public servants, domestic workers, police, judiciary etc).
3. **Size of enterprise excluded** – Are any enterprise of a certain size (e.g. employing less than 20 workers) excluded from the scope of application of the law?
4. **Collective agreements** – Are there any important collective agreements of general application at the national and/or branch level?

Types of employment contracts

5. **Probationary period** - What is its maximum duration?
6. **Fixed-term contracts (FTC)** – May FTC be concluded only for objective and material reasons (e.g. nature of work) or without any limitation?

7. **Maximum number of successive FTC** – Are there any legal limitations?
8. **Maximum cumulative duration of FTC** – Are there any legal limitations?
9. **What is the percentage of the workforce under FTC?** – Please provide any statistics, if available.

Substantive requirements for dismissals (justified and prohibited grounds)

10. **Obligation to provide reasons for dismissals** – Is the employer obliged to provide the worker with a reason of dismissal?
11. **Valid grounds to dismiss a worker** – Are any valid reasons to justify a dismissal listed in the law - e.g. worker's conduct, worker's capacity, economic reasons, or any fair reasons?
12. **Prohibited grounds to dismiss a worker** – Are there any prohibited grounds listed in the law or this issue is regulated by general non-discrimination provisions?
13. **Workers enjoying special protection from dismissal** - Please list any categories, such as women during the pregnancy and maternity leave, workers' representatives etc.

Procedural requirements for individual dismissals

14. **Notification to the worker to be dismissed** – In which form the employer must inform the worker about his or her dismissal (orally or in writing)?
15. **Length of the notice period** – How long in advance does the employer have to inform the worker about his or her dismissal?
16. **Pay in lieu of notice** – authorised or no by law?
17. **Notification to administration** – Does the employer have to notify the public administration before dismissing a worker?
18. **Notification to workers' representatives** – Does the employer have to inform workers' representatives for each individual dismissal?
19. **Approval by administration** – Does the employer need to obtain any authorisation from the administration to dismiss a worker?
20. **Approval by workers' representatives** – Does the employer have to obtain any authorisation to dismiss a worker?

Procedural requirements for collective dismissals for economic reasons

21. **Definition of collective dismissal** - e.g. percentage or number of workers concerned
22. **Prior consultation with trade unions/workers' representatives** – Does the employer have to consult them in case of planned collective dismissals for economic reasons?
23. **Notification to the public administration in case of planned collective dismissals for economic reasons** – Must the employer notify the public authorities?
24. **Notification to workers' representatives** – Is the employer obliged to inform them in case of collective dismissals for economic reasons?
25. **Approval by the public administration** – Does the employer have to obtain any authorisation in case of expected collective dismissals for economic reasons?
26. **Approval by workers' representatives** – Must collective dismissals be authorised by workers' representatives?
27. **Priority rules for collective dismissals** – Are there any legal rules to select workers to be dismissed (social considerations, age, job tenure)?
28. **Is the employer obliged to consider transfers, retraining and other options prior to dismissal?**
29. **Priority rules for re-employment** – Are any obligation for an employer to first consider applications of former redundant workers while re-hiring the workforce?

Severance payment

30. **Severance pay** – What does the employer have to pay to a worker in case of dismissal for personal and/or economic reasons?

Avenues for redress (penalties, remedies) and litigation procedure for individual complaints on dismissals

31. **Compensation for unfair dismissal** – Are there any legal limits (ceiling in months or any calculation method defined by law) or freely decided by the judge?
32. **Reinstatement** – provided in law, rarely or often available to a worker unfairly dismissed?
33. **Preliminary (judicial and/or extra-judicial) conciliation** – Is it mandatory or not?
34. **Competent courts** – What bodies are competent for disputes on dismissals (ordinary tribunals, specialised labour courts)?

35. **Alternative arbitration / mediation** – Do the parties to an employment contract have any alternative possibility to settle out their labour dispute?
36. **Length of the court procedure** – What is the average length for a case on dismissals (are there any legal limitations)?
37. **Maximum time to make a claim for unfair dismissal** – During which period does the worker have to bring his or her complaint to the court?

II. ECONOMIC CRISIS AND CASE LAW OF LABOUR COURTS

1. Which court decisions in your country have been related to the economic crisis (with the main focus on EPL)?
Please share information about any court decisions which:
- Have influenced the interpretation of legal provisions regulating dismissals, fixed-term contracts etc;
 - Were necessary to fill any gaps in the national labour law?
2. Are there any labour law reforms under discussion in your country caused or affected by the economic crisis (to make labour more flexible, or to extend protection to some categories of workers)?