



XVIIIth Meeting of European Labour Court Judges 11-12 October 2010, Jerusalem, Israel

Employment Protection Legislation



**Angelika Muller, Industrial and Employment Relations Department,
International Labour Office, Geneva**



Outline

- Discussion on Employment Protection Legislation
- Case law of Labour Courts





Employment Protection Legislation (EPL)

- **Concept used by economists and academic literature**
- **Topical and controversial issue for labour law reforms**
 - Flexibility of the labour markets
 - Flexicurity in the European Union
- **EPlex Employment Protection Legislation Database**
 - Variety of legal concepts and approaches
 - Difficulty to analyse the legal rules under a standard matrix
 - Changes over time worldwide



Employment Protection Legislation and EPLex

ILO's standards

-  Convention 158 and Recommendation 166 on Termination of Employment (1982)
-  C158 ratified by 34 countries (e.g. Australia, Finland, France, Slovenia, Spain, Sweden, Venezuela)
-  Tripartite discussions in 2011 in the ILO





Employment Protection Legislation and EPLex



World Bank



Doing Business – Index on Employing Workers (excluded from the ranking since 2009)



International Finance Corporation - reference to ILO's standards in the Guide of Good Practices on "Managing retrenchment"



Influence on national labour law reforms



Employment Protection Legislation and EPLex

OECD – EPL strictness index

 USA, UK, Australia, Ireland, Denmark, Sweden, Hungary, Finland, Austria, Italy, Germany, Norway, France, Spain

Legislation, collective bargaining and enforcement: updating the OECD employment protection indicators

 paper in 2009 with reference to our judges' meetings

 analysis of the process of resolution of dismissal disputes

 “Are specialised courts better?”



Scope of Labour Regulation: Authorised Exceptions

■ **Specific regulation for some categories of workers**

- public servants, police, army, judiciary, family members, high-level managers

■ **Domestic workers**

- France - exclusion from rules on redundancy
- Spain – special regulation
- Italy – exclusion only for dismissals
- Venezuela – put under labour regulation by a court in 2009
- 2011 – ILO's discussion on standards for domestic workers



Scope of Labour Regulation: Authorised Exceptions

■ Enterprises excluded because of their size

- Slovenia: 10 employees and less (FTC, no re-training)
- Damages for unfair dismissal: France (11 employees), Italy (15 in each unit/60 employees in the whole enterprise)
- Israel : 6 employees (Equal Opportunities Law)
- Austria: 5 and more employees for some rules
- Venezuela: 10 (no obligation to re-hire dismissed workers) or 20 workers (no right to create an enterprise trade union)
- Australia: 15 workers (Small Business Fair Dismissal Code of 2009)



Regulation of Dismissals

Collective agreements

-  in some enterprises and branches: Austria, France, Ireland, Israel, Italy, Spain, UK
-  Employees covered: 75% in Norway, 90% in Sweden, 32% of enterprises in Hungary





Probationary Period

Maximum duration

-  1 month: Austria, Hungary
-  3 months: Venezuela
-  6 months: Italy, Norway, Slovenia, Spain, Sweden
-  France: since 2008, 2-3-4 months, may be renewed once; 1 month for FTCs
-  1 year: Ireland, Israel
-  No limits: UK (but right not to be unfairly dismissed after one year of service in enterprise)
-  Spain: in 2008 a court reduced the 2-year probationary period in a collective agreement as too long



Fixed-Term Contracts (FTC)

■ Conclusion for objective and material reasons

■ France, Hungary, Ireland, Italy, Norway, Slovenia, Spain

■ No legally defined reasons to conclude a FTC

■ Israel: courts may re-qualify a FTC into a permanent contract

■ Austria: no rules for the first FTC, but any renewal would need an objective and material reason

■ UK: but a FTC employee is entitled not to be unfairly dismissed after one year of employment



Fixed-Term Contracts (FTCs)

■ **Maximum number of successive FTCs**

- no limits: Austria, Israel

■ **Maximum cumulative duration of FTCs**

- 18-24 months in France; 18-36 months for “defined subject”;
no limits for replacement of an absent employee
- 24 months: Spain (over 30 months), Slovenia, Sweden
(controversy since 2007)
- 3 years: Italy
- 4 years: Ireland, Norway, UK
- 5 years: Hungary



Fixed-Term Contracts (FTCs)

Number of workers under FTCs

-  France 14% (in 2009, 75% of recruitment under FTCs)
-  Spain: 30%, diminution because of the crisis
-  Sweden: in 2009, 17% (women) and 12,4% (men)
-  Norway: 8% in temporary jobs
-  Slovenia: 17% (70% among people of 15-24 years old)
-  Austria: FTC frequently used at the beginning of the employment relationship
-  UK: predominantly among young workers



Substantive Requirements for Dismissals

Legal obligation to provide reasons for dismissals

-  **Yes:** France (“precise, objective, materially verifiable reasons”, “real and serious cause”), Hungary (clarity), Ireland, Italy (only on the worker’s request), Norway, Spain, Sweden (“just cause”)
-  **No:** Israel (but a meeting imposed by case law), UK (if no reasons provided, presumption that the dismissal is not fair)
-  **Mixed system:** Austria (termination with notice or with reasons)



Substantive Requirements for Dismissals

- **Valid grounds to dismiss a worker**
 - Worker's conduct or capacity, economic reasons
 - 2008: termination by "mutual agreement" in France
 - No valid reasons imposed by law (Israel)
- **Prohibited grounds to dismiss a worker**
 - discrimination
- **Workers enjoying special protection from dismissal**
 - during pregnancy and maternity leave
 - workers' representatives
 - Labour courts lay magistrates (France)



Procedural Requirements for Individual Dismissals

■ Notification to the worker to be dismissed

- in writing: France (plus a meeting), Hungary, Israel, Italy, Norway, Slovenia, Spain, Sweden (but oral is not invalid)
- no legal rule: Austria, UK

■ Length of the notice period

- depending on worker's seniority
- 2 weeks (Spain, Sweden), 1 month (Israel), 2 months (France, Ireland), 3 months (Norway, UK, Hungary (only for redundancy)), 4 months (Slovenia), 5 months (Austria)
- Collective agreements (Italy)

■ Pay in lieu of notice (in all the countries under review)



Procedural Requirements for Individual Dismissals

- **No notification to the public authorities**
- **Notification to workers' representatives**
 - Israel: under some collective agreements
 - Sweden: to dismiss a trade union member
 - Spain: in case of dismissals on economic grounds and to dismiss a trade union member
 - Norway: sometimes discussion with worker's representatives
 - Slovenia: upon worker's request, the employer has to inform the worker's trade union



Procedural Requirements for Individual Dismissals

- **Approval by the public authorities**
 - Israel: for women on pregnancy/maternity leave
- **Approval by workers' representatives**
 - to dismiss a workers' representative or a trade union official





Procedural Requirements for Collective Dismissals

- **Economic reasons (redundancy, retrenchment, downsizing)**
- **Definition of collective dismissals**
 - Austria, France, Hungary, Ireland, Italy, Norway, Slovenia Spain, UK (e.g. 10 to 100 workers, or 10% of the workforce, over 30 to 90 days)
 - No legal definition: Israel





Procedural Requirements for Collective Dismissals

	Yes	No
Notification to the public authorities	All the other countries under review	Israel
Consultation with workers' representatives	All the other countries under review	Israel
Approval by the public authorities	Spain	All the other countries under review
Approval by workers' representatives	Slovenia	All the other countries under review



Procedural Requirements for Collective Dismissals

■ Notification to the public authorities

- Norway: projected redundancies cannot come into effect earlier than 30 days after the notification

■ Notification to workers' representatives

- Israel: a duty imposed by case law (good faith)
- Austria: notification to the works council, if any





Procedural Requirements for Collective Dismissals

Approval by the public authorities

-  Austria: “notice or premature dismissal” to be approved by the labour court
-  Slovenia: the employer has to take into account proposals of the employment service
-  Spain: authorisation must be provided (granted) if there is a collective agreement on the redundancy

Approval by workers’ representatives

-  Israel: in some cases courts agreed with trade unions that dismissals were unfair



Procedural Requirements for Collective Dismissals

■ **Employer's obligation to consider transfers, retraining**

- YES: Austria (if 5 workers and more in the entreprise, 6 months of worker's tenure), France ("obligation de reclassement", precise offers in writing), Ireland, Israel (case law), Italy, Norway, Slovenia, Spain
- Israel: duty imposed by case law





Procedural Requirements for Collective Dismissals

Criteria to select workers for redundancy

-  Listed in law: Austria, France, Italy, Slovenia, Spain (workers' representatives)
-  Case law: Israel
-  Collective agreements: Hungary, Israel
-  Last In First Out: Sweden
-  No legal rules: Ireland, Norway, UK (courts check if “fair method of selection was fairly applied”)





Procedural Requirements for Collective Dismissals

Priority rules for re-employment

-  Law: Austria, France, Slovenia, Norway, Sweden,
-  Collective agreements: Israel, Hungary
-  Case law: Italy
-  Spain: limitations on recruitments after dismissals for economic reasons for 6-12 months
-  No: Ireland, UK



Severance Pay

Termination benefits

-  Austria: 12 months maximum
-  France: $\frac{1}{5}$ monthly salary/year of tenure, plus $\frac{2}{5}$ over 10 years of service
-  Israel: several rates depending on worker's seniority and type of employment (1 months/year after the 1st year of service)
-  Hungary: 6 months maximum
-  Slovenia: $\frac{1}{3}$ of the annual wages maximum
-  Spain: 20 days of salary/year of service (12 months maximum)
-  No legal rules: Norway
-  Italy: special fund for severance pay



Severance Pay

Severance pay only in case of redundancy

 Ireland: 2 week pay for each year of service

 UK: 0,5 to 1,5 week pay for each year of service depending on the worker's age



Avenues for Redress (penalties, remedies)

■ Legal limits of compensation for unfair dismissal

- minimum: France

- maximum (in monthly wages): Israel (24 months), Hungary (2 to 12 months), Slovenia (18 months), Ireland (2 years), Sweden (32 months), Spain (42 months – 33 months by law of 2010)

- Italy: 15 months' wages (if > 60 workers) or 6 months

- UK: 65,300 GBP

■ Compensation freely decided by the courts

- Austria, Israel (e.g. 12 months in case law), Norway



Avenues for Redress (penalties, remedies)

Reinstatement

-  France, only in case of unfair dismissal
-  Israel – rare, except under Employment of Women Law, in case of dismissals for trade union activities or political reasons
-  Ireland, UK (rare)
-  Hungary: mandatory in case of discrimination and dismissals of workers' representatives
-  Italy, Norway, Slovenia, Spain



Litigation Procedure for Complaints on Dismissal

Preliminary judicial or extra-judicial conciliation

-  mandatory – France (except for requalification of FTC), Hungary, Italy, Spain
-  not mandatory – Austria (except for workers with disabilities), Ireland, Israel, Norway, Slovenia, Sweden, UK

Competent courts

-  labour courts: Austria, France, Hungary, Ireland, Israel, Italy, Slovenia, Spain, Sweden, UK
-  ordinary courts: Norway





Litigation Procedure for Complaints on Dismissal

Alternative arbitration (mediation)

-  Yes: Austria (in some collective agreements), France (for moral harassment and collective disputes), Israel, Italy, Slovenia, Spain (rare), Sweden, UK (ACAS)
-  Hungary: experimental programme in Budapest
-  Ireland: Labour relations Commission
-  Australia: new on-line service of conciliation since 2009
-  No: Norway



Litigation Procedure for Complaints on Dismissal

Maximum time to make a claim for unfair dismissal

-  Spain: 20 days
-  1 month: Hungary, Slovenia
-  2 months: Italy , Norway (in addition to 2 weeks to discuss with the employer)
-  3 months: UK
-  6 months: Austria (for damages; 2 weeks for re-engagement), Ireland, Slovenia
-  France: 12 months for economic reasons (and 5 years for unfair dismissal, 1 year in case of redundancy)
-  Israel: 7 years



Litigation Procedure for Complaints on Dismissal

Approximate Length of the Court Procedure

-  Spain: 4 months
-  France: 7 months in average (75% of cases – 14,7 months)
-  Israel: 1 year
-  6 to 9 months: Austria, Ireland , Italy, Slovenia
-  Hungary: 1 year in Budapest and 6 months in countryside
-  Sweden: 14 months