Economic crisis and labour law in Portugal

Teresa Coelho Moreira reports on recent legal developments

TERESA COELHO MOREIRA
Professor of Law at University of Minho Law School. PhD in Labour Law. Member of the Human Rights Center for Interdisciplinary Research.

Introduction

According to an ILO Report presented in Portugal last November[1], since Portugal's financial assistance programme was agreed in 2011 with the EU, the ECB and the IMF[2], there has been a deterioration in the labour market situation that is without precedent in the modern economic history of Portugal. One in seven jobs has been lost since 2008, two-thirds of which have been over the past two years alone with an unemployment rate in the third quarter of 2013 of 15,6%[3]. While until the mid-2000s unemployment rates remained below the European average, they are today among the highest among advanced economies, coming in only after those of Greece and Spain.

On the other hand, all across Europe, and not only in Portugal, European labour markets have become more polarised during the crisis, with many medium-paid jobs disappearing in favour of lower-paid and less-protected jobs, while the top segment of the labour market has continued to do well, and many companies went bankrupt and such growing inequality involves many economic, social and political risks.

Recent developments in Portuguese Labour Law

The Economic Adjustment Programme for Portugal includes a joint financing package of €78 billion and covers the period 2011 to mid-2014 but it has a cross compliance because it required the Portuguese Government to introduce a series of reforms aimed at tackling the rising unemployment through increasing labour market flexibility and through wage reductions with a view to decreasing the operating costs for companies. In line with the Memorandum of Understanding[4] and its subsequent revisions, significant changes were thus introduced in five different areas: unemployment benefits, employment protection legislation, working time arrangements, collective bargaining and active labour market policies.

In relation with employment protection legislation before 2011, Portugal had one of the largest compensations for dismissed workers with open-ended contracts among European countries. Especially at *long tenure*, severance payments for open-ended contracts were highly costly as entitlements to severance pay increased with seniority and had no upper bound.

So, in order to respect the programme that was established with the EU, ECB and IMF, several labour reforms were introduced by the Portuguese Government in relation with the severance payments in order to align them with the EU average that is of 8 to 12 days[5]. The changes were passed into law through Law No 69/2013 of 30 August 2013, which entered into force 1st October 2013. This law reduces severance payments: the basis was reduced to 18 days of base remuneration and seniority per year of service for fixed-term contracts, and to 18 days of base remuneration and seniority for the first three years of service and 12 days for the following years for unfixed-term employment contracts. In the case of collective dismissal, the corresponding number of days is 12. There is, however, a transitory regime in the case of terminating open-ended, fixed, and temporary contracts which started before the entry into force of the Law.

On the other hand, Portugal also created a *compensation fund* to partly finance severance payments due to employees in case of termination of their employment. The creation of a *compensation fund* or *dismissal fund* was foreseen in the Tripartite Agreement established between the government and the social partners on 22nd March 2011 as well as in the MoU. Law No. 70/2013, which entered into force on 1st October 2013 was published in the Official Gazette on 30 August 2013 and institutionalises the creation of such a *compensation fund* under Portuguese law.

The main guidelines of the new legal framework are the creation both of the "*Fundo de Compensação do Trabalho*" - "FCT"-, and the "*Fundo de Garantia de Compensação do Trabalho*" - "FGCT"-, and, as an alternative to FCT, an Equivalent Mechanism -"ME"-, is also foreseen.

On the other hand, employers shall subscribe to the FCT or an ME for all his or her employees, in block, and shall receive a monthly discount for the FGCT.

However even if the FCT/ME/FGCT cover all valid contracts after the new legal framework enters into force,

Share your views!

employment contracts of very short duration are excluded.

The FCT means that each employer has an individual account with the FCT with a contribution of 12 times/year and 0.925% employee's remuneration and seniority. This covers part of severance payments, corresponding to the contributions made by the employers and is only transferable under certain conditions, like transfer of undertaking or if the employer decides to transfer all his/her employees from the FCT to ME, or vice versa.

The FGCT, on the other hand, has a mutualistic nature, with a contribution of 12 times/year, 0.075% employee's remuneration and seniority, that covers up to a total amount of 50% of the severance payments due to the employee, whenever the employer does not pay the amount necessary to guarantee such an amount to the employee.

Alternatively to the FCT, an equivalent mechanism may be established by an agreement between the relevant entity and the employer, with a protection equal to that granted by the FCT. And, like the FCT, ME is only transferable under certain conditions.

Conclusions

Since the start of the global financial and economic crisis in 2008, Portugal has experienced an extended recession resulting in the most significant impairment in the labour market and social situation in its recent history. Many legal changes had to be made and still are going to be made to respect the agreement signed with EU, ECB and IMF that will lead to changes in labour law but it is also important to create a new strategy with a coherent job-centred scheme, which will curb unemployment rate and create a better economic environment. ■

Footnotes

1 Tackling the jobs crisis in Portugal, p. 2.

2 Portugal and the European Union (EU), the European Central Bank (ECB) and the International Monetary Fund (IMF) agreed on an economic and financial adjustment programme of €78 billion that translated into a set of measures and legislative initiatives, to be introduced during a three-year period.

3 This information can be seen in www.ine.pt (last visited January 2014).

4 MoU.

5 Even if at this level there are many differences from country to country and one cannot compare the salary from distinct countries in the EU.

> “THERE HAS BEEN A DETERIORATION IN THE LABOUR MARKET SITUATION THAT IS WITHOUT PRECEDENT IN THE MODERN ECONOMIC HISTORY OF PORTUGAL”