Economic crisis and labour law reforms

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GREECE

Costas PAPADIMITRIOU
Professor
University of Athens

Introduction

Faced with the economic crisis and the joint pressure of the IMF and the European Union, the Greek legislative and social landscape was particularly marked, especially by the many changes to both labour and social security law. The measures concerning particularly labour law invariably tend only to lower the cost of labor and to increase labor flexibility. We shall hereafter clarify that the changes referred to, are not simple and "regular" transformations of labour law trying to tackle the economic crisis. They appear change it in its foundation and nature. They aim primarily at sending a strong message specifying a final overthrow to the standards of labor law.

We shall also clarify that the measures have been imposed without any prior negotiation with the Greek social partners.

A – The flexibilization of the Greek individual labour law.

As the crisis become deeper, the protective function of labour law seems to be more and more forgotten. The emphasis is on both the reduction of labor cost and the flexibility in the use of the labor force.

1 - The reduction of the labour cost

The “troika” has long insisted on the need to reduce wages, a measure believed to be necessary in order to improve the competitiveness of the Greek economy. In Greece, the minimum wage is set by the national general collective agreement concluded by the most representative professional organizations. Law 4046/2012,

following the instructions of the "Troika", provides that the minimum wage fixed by the national general collective agreement is, commencing from February 14, 2012, reduced by 22%. In addition, in the case of young workers, the reduction is even more important, since it amounts to 32%.

Yet, this legislation raises issues concerning its compliance with the Constitution, which guarantees, firstly, the autonomy of collective bargaining against legislative interventions and, secondly, the equality of treatment among workers.
The European Committee of Social Rights was of the view that the less favorable treatment of younger workers at issue is designed to give effect to a legitimate aim of employment policy, namely to integrate younger workers into the labour market in a time of serious economic crisis. However, it considered that the extent of the reduction in the minimum wage, and the manner in which it was applied to all workers under the age of 25, is disproportionate even when taking into account the particular economic circumstances in question and consequently contrary to the European Human Rights Accord. A recent decision of the Council of State considered that measures including the reduction of wages, the abolition of the marriage bonus and the abolition of the signing of national general collective labour agreements (setting out minimum wages) following negotiations between employers and working people are not contrary to the Constitution and to international labour agreements.

On the other hand the level of compensation of overtime is a factor of internal flexibility of the labor force. The Greek legislature (Law 3863/2010) reduced, in a general way, the increases provided in the event the employer decides the use of overtime. In this way the increase of the hourly rate falls from 25% to 20% and from 50% to 40%. Thus, an employers' demand to a more flexible and less expensive labor is satisfied.

2. The flexibility in the use of the labour force

If the economic activity of the undertaking is reduced, the employer is entitled, according to the provisions of Greek Law to reduce unilaterally the employment days. "Partial unemployment" or "rotation of employment" is a measure permitting a company without any agreement of the employees, to alternatively employ them for a number of days less than originally planned in their employment contract and to reduce in a proportional way their salaries. No employment benefits are paid to the

employees due to the reduction of their working time and their salaries. The new law 3899/2010 increased the maximum duration of the above measure which now can be extended up to 9 months per calendar year, which creates a rather extreme one measure.

3- The legal regime of dismissal

The rules relating to dismissal also constitute an important external flexibility factor of the labor force.

Rules related to severance pay and their beneficiaries have therefore been amended and the threshold beyond which dismissals are considered to be collective was increased. In addition, a recent legislation repealed any previous obligation imposed on the employer to justify the dismissal.

The legality of the dismissal of a worker with a contract of indefinite duration depends on the payment of the severance pay to the dismissed employee. If the company complies with the period of notice, the amount of compensation due to the dismissed employee is reduced by 50 % . The new legislature reduced the maximum of the period of notice from 24 to 6 months. The cost of dismissal is therefore, indirectly, reduced taking into account that the dismissing employer is facilitated to comply with the period of notice and to reduce the severance pay.

In addition, dismissal is also, under the new Law, greatly facilitated by permitting the employer to pay the severance pay in installments equal to 2 months' salary, which lifts the obligation of full payment of the compensation at the time of the dismissal.

Finally, under the new legislation (Law 3899/2010), employees with less than one year of service no longer receive any severance pay. Similarly, no notice of termination is now required in the event of a breach of the employment contract of these employees without important seniority (less than one year). However, the European Committee of Social Rights considered that making no provision for notice periods or severance pay in cases where an employment contract is terminated during the probationary period set at one year by the law, constitutes a violation of Article 4 §4 of the 1961 Charter recognizing the right of all workers to a reasonable period of notice for termination of employment.

A Law of 2012 has also abolished all existing clauses of employment stability, so that all of the employers are able to dismiss without having to invoke any reason justifying the termination of the contract.

Finally in accordance with the new provisions, the threshold of collective redundancies is increased and the procedure is now necessary only for dismissal of more than 6 (instead of 4) employees per month concerning establishments employing 20 to 150 employees and for dismissal of more than 5% (instead of 2%) of the employees concerning establishments employing more than 150 employees.

4- The reduction of expenses of the public sector

The fact that a major reason for the Greek economic crisis is related to public expenses, reducing the latter has been a priority for the "Troika" and the Greek government. This reduction is oriented in two directions: firstly, the level of wages in the public sector, and, secondly, the reduction of jobs in the public sector.

Firstly, premiums for holidays (Christmas and Easter) and of annual leave have been first reduced drastically and finally abolished. Following that, a law of 2011 reduced even more the salaries of civil servants and employees of public companies, by imposing ceilings on salary by occupational category. In this way, it was given an overall decrease of 35%, compared to the level of wages in 2010. The Greek Council of State stated that the above reductions are not contrary to the Constitution and to international labour agreements.

A new procedure of abolition of jobs of public sector employees was finally established in 2011 by the government. An important number of State employees have been dismissed or placed in a status of pre-dismissal.

Beyond these measures concerning the flexibilization of individual labour law relations in Greece and the reduction of expenses by the public sector, issued by the Greek legislature, major modifications of the collective labour law were also adopted.

B The deconstruction of collective labour law relations in Greece

Recent changes in Greek collective labour law were so important that it seems that its nature has been changed. Equilibrium points on which the basis of industrial relations was founded in recent years, even in recent decades, have been displaced.

The first feature was in the past the principle of favor in the event of concurrent collective agreements. The priority is now given by the new law to the company collective agreement, regardless of whether it contains less favorable terms than those provided in the branch agreements.

The second constant was the possibility to extend the application of collective bargaining agreements and to make it binding upon all the workers of a given economic sector or occupation. The Minister of Labor has no more the above power to extend the scope of a collective agreement.

Third, upon expiration of a collective agreement, it remained in force for a period of six months and there was beyond this period continuation of all of its benefits for the employees up to the conclusion of a new agreement. The new regulation reduces the period of extension of the validity of the agreement from six to three months and there is continuation of benefits beyond this period only for a small part of them non presenting a great importance.

Finally, the provisions relating to the settlement of collective labour disputes were amended. Abolition of "mandatory" arbitration is probably the most characteristic change. Currently, the arbitration is absolutely subject to the consent of both parties, which undoubtedly leaded the system to obsolescence. There is no more sanction for the employer who refuses to negotiate and to participate to a mediation. Thus, the procedure for settling collective disputes that marked the Greek collective relations during the last twenty years, often bringing a solution to several serious disputes, seems abandoned. The conclusion is that branch agreements are no more concluded for the future and that company agreements are concluded only in order to provide important reductions to the wages provided in the still valid branch agreements. However, a recent decision of the Council of State considered that these provisions abolishing the option of unions to resort to arbitration unilaterally following the failure of reaching a collective labour agreement, are unconstitutional.