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I - THE INCREASE IN THE MINIMUM WAGE

In January 2018 the minimum wage was increased to 580 euros per month. Article 273, n°1, of Portuguese Labour Code guarantees all employees a minimum monthly wage, to be annually established by specific legislation, following consultation of the social partners because this topic requires a binding opinion by the Standing Committee for Social Concertation (CPCS).

However, this year, against the tradition established, the decision on increasing the minimum wage was adopted without the tripartite agreement. The Socialist Party government proposed increasing the minimum wage to the social partners at the CPCS. The proposal for a 4.1% increase from 557 euros to 580 euros was in line with its plans for the minimum wage to reach 600 euros next year and also with its agreement with the left-wing parties in parliament. The proposal has also taken into account quarterly reports on the impact of an increase in the minimum wage presented and discussed at the CPCS. These reports revealed that the increase did not have a negative impact in terms of employment and economic growth, but had a positive impact combating inequality and in-work poverty.

Nevertheless, the General Confederation of the Portuguese Workers (CGTP) asked for a minimum wage of 600 euros, although the General Union of Workers (UGT) was prepared to accept 580 euros while highlighting that certain conditions would allow for 585 euros. The four employers' confederations represented at the CPCS did not oppose to the government proposal but to reach an agreement they required specific conditions related with the commitment of the government to not introduce any changes on labour legislation; the introduction of amendments to corporate income tax in order to eliminate the special advance tax payment (*Pagamento Especial por Conta*); the reduction of their contributions to the Workers' Compensation Fund; and an increase in financial support for vocational training. However, the government excluded these demands and the employers' confederations refused to sign the agreement. Still, on 21 December 2017, the Council of Ministers approved the increase of the minimum wage to 580 euros for 2018, and it was implemented on 1 January 2018 by Decree-Law No. 156/2017 of 28 December.

II - AMENDMENTS ON PORTUGUESE LABOUR CODE

A. The law n°73/2017, of 16 of August, intended to reinforce the combat against the sexual harassment and mobbing, through some new provisions, notably (i) the protection of the victim and his/her witnesses against disciplinary measures and during the claim brought against the employer and/or the agent, (ii) the obligation of the employer to implement a code of conduct, (iv) the duty of the employer to start a disciplinary procedure and (iv) the amendment of the regime applicable to the extinction of the employment contract.

The new regime expressly prohibits any conduct of sexual harassment and mobbing - article 29, no. 1 of the Labour Code. This amendment could reinforce an important pedagogical message: zero tolerance towards sexual harassment and mobbing. It is undoubtedly determined the right to the payment of damages in case of sexual harassment and mobbing - article 29, no. 4, of the Labour Code. Previously, it was expressly applicable the right to the payment of damages in case of discriminatory conduct - article 28 ex vi

former article 29, no. 3 of the Labour Code. This could also be considered a pedagogical amendment.

The legislator prevented the application of disciplinary sanctions against complaints or victims and witnesses indicated by them, unless they acted with willful misconduct, taking into account circumstances mentioned in the proceedings triggered due to sexual harassment or mobbing, until its final judgement with *res judicata*, regardless the right to adversarial proceedings - article 29, no. 6, of the Labour Code. This rule should be interpreted carefully. First, it should exclude all complaints with lack of grounds. Second, this protection should cover any disciplinary action formally based on different reasons, but materially connected with complaints against sexual harassment or mobbing - article 381, al. a, of the Labour Code. Third, it should allow previous investigations and the interruption of the limitation period - article 352 of the Labour Code¹.

As for companies with seven or more employees, the employer is obliged to enact a code of good conduct - article 127, no. 1, al. k of the Labour Code. The legislator does not follow the previous legal definition of micro, small, medium-sized or big companies (article 100 of the Labour Code) without any foreseeable reason and, consequently, some questions of constitutionality may arise, based on the equality principle.

The employer becomes responsible for the compensation of damages arising from occupational diseases resulting from the practice of sexual harassment or mobbing - article 283, n°8 of the Labour Code. The Social Security will pay it, without prejudice to its own rights against the person responsible for the damage, article 283, n°9 of the Labour Code. The dismissal or any disciplinary sanction will be presumed as abusive if it occurs until one year after the complaint or any other type of exercise of rights related to sexual harassment and mobbing - article 331, n° 2, al. b of the Labour Code. This provision shall not apply in case of unfounded or revengeful complaints².

The new regime explicitly establishes as a fair cause of termination of the employment contract the practice of sexual harassment or mobbing denounced to the Labour Inspection - article 394, n°2, al. f) of the Labour Code. However, the situation of sexual harassment or mobbing already allowed the employee to terminate the employment contract with fair cause and the right to a compensation. The Labour Inspection shall make available, on its website, (i) its own e-mail address for receiving complaints of sexual harassment or mobbing in the workplace and (ii) information on identification of sexual harassment or mobbing practices - article 4, n° 1 of the Law n°073/2017.

B. Another Amendment of the Portuguese Labour Court was made by Law no. 14/2018, of 19 March about the transfer of undertakings. This Law is very important because it expressly establishes a right of opposition of the worker in case of transfer of undertakings in the new Article 286-A. The existence of this right has caused a lot of debate over the years in Portugal because the aim of the legislation is to protect the workers and to transfer

1 Cf. D.Carvalho Martins, "Assédio moral e conflito laboral: areias movediças", *II Congresso Europeu de Direito do Trabalho*, Almedina, 2018, pp. 176-177.

2 Cf. D. Carvalho Martins, *ibid.*, p. 180.

automatically their contracts on the same terms as before in the event of an undertaking. However, there was also the question of knowing if the worker could have the right to oppose to this transfer of his or her contract with different opinions and views on the matter. Nevertheless, with this amendment, this right was consecrated in a very broad sense even if, in our opinion, not in a very clear way³.

III - PROPOSAL OF AMENDMENTS ON LABOUR CODE

On 23 March 2018, the government published a proposal to lighten the widespread of job insecurity by presenting a proposal to combat precariousness and labour segmentation and to promote collective bargaining - *Combater a precariedade e reduzir a segmentação laboral e promover um maior dinamismo da negociação coletiva*⁴. The proposed reforms aim to introduce several legal restraints on precarious employment practices. Some of the headline measures included a cut to the maximum duration of fixed-term contracts (from three to two years) and a new social security contribution for employers who over-rely on such contracts. There were also plans to reduce the number of times temporary contracts can be renewed, and changes designed to simplify employment contracting procedures, among other measures. This Document was then discussed with the Social Partners at the CPCS and they reached an Agreement on 24 May 2018, without however all the Social Partners because the biggest Workers' Confederation, CGTP, didn't sign it⁵.

It is important to remember that in Portugal there is a long tradition of social dialogue and many subjects are discussed prior in the Social Concertation Standing Committee. The main tasks of this Standing Committee is to foster dialogue and social concertation to enter into agreements and must also give an opinion on the restructuring and socioeconomic development policies, as well as their implementation; provide solutions for the proper functioning of the economy taking into account its effect on the social and the labour fields; regularly appraise the evolution of the country's social and economic situation; appraise the legislation projects concerning social and labour matters, namely labour law, and employment policies, vocational training, social welfare, tax and public administration policies are included among the matters to be discussed, which includes Active Labour Market Policies. According with article 56, no. 2, a) of Portuguese Constitution and article 470 of PLC, all bills regarding employment and industrial relations issues must be presented to the social partners and have to be discussed with them. The breach of this makes the act unconstitutional and therefore not applicable. In the Agreement there were several measures to combat the precariousness of the Labour Market in Portugal and to reverse some of the measures that were taken during the bailout program from May 2011 to May 2014 that had to assure the compliance with several obligations foreseen in the *Memorandum of Understanding*. In the Agreement it was decided to make several amendments on the Labour Code, *inter alia*, to reduce the maximum duration of fixed-term contracts from three to two years, including renewals, and establish that the total duration of renewals cannot exceed that of the initial contract period; eliminate from the Labour Code

3 Vd. L. Amado, "Transmissão da empresa e contrato de trabalho: algumas notas sobre o regime jurídico do direito de oposição", *Revista de Legislação e Jurisprudência*, nº 4010, 2018, pp. 290-300.

4 <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=8a67999d-c92c-43f9-8963-5a1935d533d5>

5 <http://www.ces.pt/storage/app/uploads/public/5b2/7e5/2f6/5b27e52f6b180834433182.pdf>

the rule that allows the use of the fixed term contract to employ young people looking for their first job and the long term unemployed, leaving only this possibility for the very long term unemployed – unemployed for more than two years. However, the probation period for these cases was increased for 180 days (when now is 90 days); introduce a maximum of six renewals of the temporary employment contract, currently non-existent in the law and several other changes. This Agreement led to a Bill Proposal 136/XIII presented by the Government on 4 June 2018⁶ and now is under discussion in the Parliament.

IV - PROMOTE COLLECTIVE BARGAINING

In this Agreement, and also in the Bill Proposal, the Government proposed several changes to boost the collective bargaining in Portugal and all these changes follow recent reforms to tackle the crisis of collective bargaining. According to the numbers presented in 2017, only 820 thousand workers were protected by collective labour agreements, compared with 1.9 million in 2008, and until June of this year there were only 289 thousand more⁷. In the Agreement one can read that one of the main goals is to enhance social dialogue at all levels and, in particular, the social concertation as a privileged instance of tripartite dialogue to promote sustainable and negotiated labour market and to promote changes in labour relations.

The proposal amendments in the Labour Code to help restore coverage to pre-crisis levels include changes in the *working time accounts* (banco de horas) to end the possibility of these working time accounts by individual agreement. They can only be regulated through collective agreements or by group agreements to be reached through consultation of workers. With this new possibility of *working time accounts* the normal working hours can be increase up to two hours a day with a limit of 50 hours per week and 150 hours per year if, after consultation by secret vote of the workers to be covered, and guaranteed to monitor the voting by structures of workers' collective representation, it is approved by at least 65% of the workers. This modality of *working time accounts* is valid for a maximum period of four years. However if one third of the workers covered request to be re-consulted after 2 years of the established period and by referendum this working time account is not approved, it ceases. There are also new measures to prevent collective agreements from expiring unnecessarily. However, has highlighted before, these measures are in a Proposal that is now being discussed in the Parliament.

⁶ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalhelIniciativa.aspx?BID=42733>

⁷ <https://www.dgert.gov.pt/wp-content/uploads/2018/02/IRCT-publicados.-2017.pdf> <https://www.dgert.gov.pt/wp-content/uploads/2018/07/IRCT-pub.-2018.06.pdf>