

EPSU Collective Bargaining and Social Dialogue Conference

**Evaluating the European sectoral social dialogue and
the impact of austerity on collective bargaining
in the public services**

13-14 December 2012, BRUSSELS

**TRADE UNION RIGHTS AND COLLECTIVE
BARGAINING**

**Trade union litigation action –
Which use is made (and to be made !) of international
and European standards?**

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CONTEXT

- Worrying trends in labour law reforms in all members states
 - Not always clear how tight/direct the link between the crisis and labour law reforms is
 - piecemeal but important deregulatory measures
 - intrusive overhauls of labour codes
 - fundamental changes to industrial relations structures and processes and employment protection
- In both “old” as “new” member states and even in candidate countries
- Under the argument: deregulatory measures as responses to the current economic crisis in order to render labour markets more flexible; although crisis is result of several reasons but certainly not the labour law in Member States and the reforms seem to lead only to more precariousness and in-work poverty but not to more employment let alone quality jobs

THE MAPPING EXERCISE

WHAT ARE THE DEREGULATORY MEASURES?

1. Working time
 2. Amendments towards more flexible conditions for atypical work
 3. Redundancies rules
 4. Changes to industrial relations and collective bargaining systems
 5. Lack of respect for democratic and participatory foundations and procedures in passing the reforms
- (5bis) Destabilising monitoring and enforcement systems

THE MAPPING EXERCISE

1. Working time

- Increasing the maximum lengths of shift periods
- Increasing the amount of potential hours overtime to be negotiated in to the salary (CZ)
- Extend possibilities for overtime and night work (PL)
- Change in compensation for overtime rules (PT)
- Changes to/ deletion of leave or holiday schemes (PT, BE)

THE MAPPING EXERCISE

2. Amendments towards more flexible conditions for atypical work

- Extending maximum lengths of periods for Fixed term work (CZ, GR, PL, RO, SL, SP)
- Extending the number of renewals (SK, PL)
- Creation of 'new' types of contracts for target groups (i.e. young workers) with less protection (CZ, GR, PL, SK, SP)
- Amendments to Temporary Agency Work (CZ, LT)

THE MAPPING EXERCISE

3. Redundancies rules

- Lowering the severance pay entitlement (CZ, PL)
- Altering the periods of notice in a less favourable way (SK)
- Adding new reasons for allowing for individual dismissals (PT, SP)
- Simplifying procedures in case of collective redundancies by altering the thresholds (LT)
- Simplifying administrative procedures in case of individual dismissal (F)

4. Changes to industrial relations and collective bargaining systems

- Decentralisation of collective bargaining to company level (IT, GR, PT, SP, RO)
- Deviate *in pejus* to higher level collective bargaining / statutory rules (GR, IT, SK)
- Amendments to representativeness criteria (PT, RO)
- Moving TU prerogatives to works councils (PT, SK) or to workers representatives (PL)
- Diminishing role of social dialogue institutions (RO, HU)

THE MAPPING EXERCISE

5. Lack of respect for democratic and participatory foundations and procedures in passing the reforms

- Drafting and hierarchy of social norms have been affected
- Recourse to 'emergency procedures' to short cut agreements on 'anti-crisis' measures agreed by the social partners (ES, HU, SK)
- Greek MoU was not ratified with the necessary qualifying majority voting of the Greek parliament.

(5bis) Destabilising monitoring and enforcement systems through budget cuts (less resources also human), reforms of labour inspectorates, reforms in mediation and conciliation systems, reforms of judicial system

THE MAPPING EXERCISE

“It is far from over yet...!”

- **EU 2020 – 2012 country-specific recommendations**
 - Reform collective bargaining / wage setting systems (17 out of 27 member states)
 - Increase attractiveness and availability of more flexible forms of working arrangements (CZ, SI)
 - Review of Fixed term work, Temporary Agency Work and Part-time work envisaged (but with SP's) (FI)
 - Amendments to Temporary Agency Work rules (BG, DE)
 - New “intern contracts” (BG)
 - Leave/holiday systems (BE)
 - Review administrative procedure individual dismissals (FR)
 - Collective dismissal (BE)
 - Comprehensive review in relation to Fixed Term Contracts , dismissal law and Working Time arrangements requested (LT)
 - Extension probationary period permanent contracts (PL)
- **Implementation of Memorandum of Understandings**
 - E.g. Greece recommended to move to six-day working week
- **“Creativity of governments unlimited”**
- **Spill over effects in EU neighbouring countries**

Infringing Fundamental Social Rights a new TU battlefield?

- AT NATIONAL LEVEL
 - Strong TU reactions – demonstrations - Strikes
 - TU – employers joint reactions (RO: Memorandum of understanding)
 - Cases before National Human Rights Commissions (EL), constitutional courts (PT, ES,), labour courts (PT), mediators (PT)

HOWEVER several measures run counter the obligations member states have under fundamental ILO and Council of Europe standards and EU norms

- AT THE EUROPEAN / INTERNATIONAL LEVEL
 - ILO (and other UN bodies)
 - Council of Europe
 - EU

Infringing Fundamental Social Rights a new TU battlefield?

- **AT THE INTERNATIONAL LEVEL**

- Observations / Complaints to the ILO

- ILO CEACR observations /direct requests 2011-2012 on

- GSEE in 2010 on 12 conventions (CEACR reports 2011/2012)
 - C122 on Employment Policy: BU, ES, FI, HU, LT,
 - C102: Social security 2011-2012 (and 2013?)
 - C150 on Labour administration: PT

- Complaints send by ES TU's in relation to TU rights reform (May 2012) combined with cases to ES constitutional courts

- ILO – Report of the Committee of freedom of association

(316session 1-16 /11/ 2012) : **Greece:**

- Suspension of and derogation to the collective agreements via Decree (Austerity measures) violate ILO C98
 - Derogation in pejus and decentralisation of collective bargaining violate ILO C87 and C98

- ILO Technical Assistance/High-level missions (HU, RO, EL, ...)

E.g. CEACR obs. 2012: call on EL to consider new missions
reform of social security system and Labour inspection

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Infringing Fundamental Social Rights a new TU battlefield?

- **AT THE INTERNATIONAL LEVEL (continued)**
 - The ILO/UNESCO Recommendation concerning the Status of Teachers (1966) and The UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) – Portuguese teachers: complaint
 - UN UPR Working Group Human Rights Council - Ireland – TU's provided evidence on detrimental review of the CB system as requested by Troika

Infringing Fundamental Social Rights a new TU battlefield?

- **AT THE EUROPEAN LEVEL**

- Council of Europe instances

- ECtHR – Hungary – 8,000 applications – pension rights
 - CoE Parliamentary assembly report/resolution 1884 of June 2012 (Austerity measures – a danger for democracy and social rights) – Rapporteur Mr. A. HUNKO
 - New Report/resolution envisaged for 2013 on “Protection of the right to bargain collectively – Doc 13043 – 2 October 2012 – Rapporteur Mr. A. HUNKO
 - Collective complaints – 7 complaints from Greek (public sector) Trade unions of which 2 decided and 5 pending

Infringing Fundamental Social Rights a new TU battlefield?

- **No. 65/2011** General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece
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- **No. 80/2012** Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece
- **No. 79/2012** Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece
- **No. 78/2012** Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece
- **No. 77/2012** Panhellenic Federation of Public Service Pensioners v. Greece
- **No. 76/2012** Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece

Infringing Fundamental Social Rights a new TU battlefield?

The complaint 65/2011 alleges:

- making it possible to dismiss a person without notice or severance pay during the probation period in an open-ended contract, is in breach of Article 4§4 of the 1961 Charter
- the derogation by means of a collective agreement concluded at enterprise level from the provisions set out in a collective agreement concluded at sectoral level leads to a deterioration in working conditions for the employees concerned, in breach of Article 3§1a of the 1988 Additional Protocol to the 1961 Charter;
- in a situation where there is no trade union in the enterprise, enable for the collective agreement at enterprise level to be concluded by trade unions of a different level (corresponding to sectoral trade union or federation), in breach of Article 3§1a of the 1988 Additional Protocol to the 1961 Charter.

Infringing Fundamental Social Rights a new TU battlefield?

ECSR concludes for complaint 652011:

- Unanimously: violation of article 4 regarding the possibility for dismissal without notice or compensation during the probation period in an open-ended contract
- 14 votes to 1: no violation of article 3§1 of the Additional Protocol as it does not concern the right to collective bargaining; this right is covered by article 5 and 6 of the Charter but can not be examined as these articles are not ratified by Greece
- Dissenting opinion Mr. Petros Stangos (Greek member ECSR) based on
 - A worker and trade union friendly reading of the article 3§1 against the real aim of the legal measure i.e. purpose of serving first and foremost to reduce the proportion made up by the cost of labour in the production cost of firms, with the ultimate aim of increasing their competitiveness
 - allowing an enterprise-level collective agreement to be concluded by the employer with a trade union at a higher level behooves the workers of the enterprise, or their representatives, to participate in determining and improving working conditions in the enterprise and are liable to have the pecuniary and non-pecuniary interests of the workers of that enterprise flouted or overridden by other considerations.



The complaint 66/2011 alleges:

- introducing “special apprenticeship contracts” between employers and individuals aged 15 to 18 with lesser labour law and social security rights violates Articles 1§1, 7§2, 7§7, 7§9, 10§2 and 12§2 of the 1961 Charter;
- Measures concerning the employment of new entrants to the labour market aged under 25 (remuneration below minimum wage) violates Article 4§1, taken in conjunction with Article 1§2 of the 1961 Charter.

Infringing Fundamental Social Rights a new TU battlefield?

- Violation of art 7§7 as these young workers are not entitled to three weeks' annual holiday with pay
- And violation of art 10§2 – no coherent framework of rules on apprenticeships – legislation only sets length (1 year) and matter of remuneration (70% of minimum wage or daily wage)
- And violation of art 12§3 (raise progressively system of social security to higher level) - measures introduced do maintain a sufficiently extensive system of compulsory social security and do not refrain from excluding entire categories of social protection offered by the system; the special apprenticeship contracts even establish a distinct category of workers who are effectively excluded from general range of protection offered and this represents even a deterioration of the social security scheme
- And violation of art 4§1 (fair remuneration) in conjunction art 1§2 because due to the reductions in the minimum wage so that the minimum wage paid to workers below 25 years falls below poverty level.

Infringing Fundamental Social Rights a new TU battlefield?

Cases 80-76: pension reform in public and private sector

- Reduction of primary and auxiliary old age pensions and additions to pensions
- Reduction of the additions to pensions known as Christmas, Easter and vacation bonuses
- Reductions in primary pensions
- Reduction in auxiliary pensions
- Introduction of Pensioners' social solidarity contribution
- Suspension or reduction of pensions for pensioners with an occupation
- Reduction of private sector pensioners' social solidarity benefit (only for case 76)

ETUC observations to cases 76-80 – 12 August 2012

- Landmark cases :
 - Austerity cases
 - First time on pensions
 - 1st Assessment of art 31§1 on restrictions outside art 6§4
 - Art 12§3 substantive right of dynamic character
- Provides elements from international/European/national sources:
 - ECSR case law on art 31§1 which sets criteria to assess conformity of restrictions
 - CoE Parliamentary Assembly Resolution “Austerity measures – a danger for democracy and social rights”
 - ILO high level mission report September 2011
 - ILO CEACR observations 2011 on Convention 102
 - 2 Recommendations Greek HR commission

ETUC observations to cases 76-80 – 12 August 2012

Basically ETUC argues:

- The measures violate article 31§1 on restrictions as such as they can not be considered
 - Art 31 prescribes exhaustively legitimate aims “as protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals” and thus economic or financial aims are not mentioned
 - Necessary in a democratic society and not appropriate
- They also violate article 12§3 as it sets to raise progressively the system of social security to a higher level

Infringing Fundamental Social Rights a new TU battlefield?

- **AT THE EUROPEAN LEVEL – EU level instances**

- European Parliament Employment Committee own initiative report on enforcement of fundamental social rights (freedom of association, collective bargaining, age discrimination and health and safety) in the following countries FR, EL, IT, NL, HU, SE, UK
- New report envisaged on right to collective bargaining – MEP Mr. Thomas Händel
- European Court of Justice Case C-128/12 - Sindicato dos Bancários do Norte and Others v BPN
- More case law to be expected on austerity/labour law measures - cfr. Increase in cases relating to fixed term work

What trade union litigation strategy to adopt?

- **SUGGESTIONS FOR FUTURE ACTION**

- ILO instances:

- Continuation of submitting complaints and observations in view of the CEACR observations for 2013 and beyond (see also link to Council of Europe social security code)
 - Idem for ILO General Survey
 - 2013: Labour Relations (Public Service) and Collective Bargaining
 - 2014: Wages
 - Awareness raising and follow up of conclusions of past and foreseen ILO technical/high-level missions in concerned countries and considering how to ensure more of such missions in other countries
 - Investigate “complaints procedures” of specific instruments relating to specific EPSU sectors/professions/activities (e.g. teachers complaints)

What trade union litigation strategy to adopt?

- **SUGGESTIONS FOR FUTURE ACTION (2)**

- Council of Europe instances

- Continuation of submitting observations in view of the ECSR conclusions for 2013 and beyond (both in framework of national reports as on continuous base if devastating developments occur)
 - 2013 conclusions - Health, social security and social protection – national reports by 31/10/2012 – ref period 01/01/2008- 31/12/2011
 - 2014 conclusions - Labour rights (incl. fair remuneration (art 4.) and trade union and workers reps rights (art. 5, 6, 21, 22, 28 & 29) – national reports by 31/10/2013- ref period 01/01/2009- 31/12/2012
 - Conclusions on the application of Code of Social Security
- Consideration of filing collective complaints (cfr. Greek cases)
- Consider appropriate follow up of CoE Parliamentary assembly report/resolution (Austerity measures – a danger for democracy and social rights)
- Provide input to new CoE Parliamentary assembly report/resolution on right to collective bargaining

What trade union litigation strategy to adopt?

- **SUGGESTIONS FOR FUTURE ACTION (3)**

- EU instances

- Submission of information to EU Fundamental Rights Agency Vienna (ETUC participates now in Advisory Board)
 - Ensuring TU inputs in view of next Commission CSR 2013 Recommendations (for 2012 CSR's only comments by Belgium social partners)
 - Ensure input in the new EP report/resolution of MEP Händel
 - Close follow up ECJ Case C-128/12 - Sindicato dos Bancários do Norte and Others v BPN
 - Idem for other cases e.g. fixed-term work and relevance for public sector
 - Envisage own cases ????

And remember....





Thank you very much !

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