

# CHANGING EMPLOYMENT

MARIE CURIE PGROMME ITN Network School 3

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## NATIONAL LABOUR LAW REFORMS IN TIME OF CRISIS: FLEXIBILISATION WITHOUT SECURITY

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# WE SHOULD QUESTION:

## **EXTEND OF THE LABOUR LAW REFORMS**

- Disproportion (scope and coverage)
- Intrusive overhauls of labour codes
- Fundamental changes

## **CONSEQUENCES**

- Flexibilisation of the labour market – deregulation of labour law and downgrading of labour standards -
- Violation of fundamental social rights

## **FLEXICURITY?**

- Where is the security counterpart to flexibilisation?
- Has the crisis be an ‘false’ excuse to legitimate reforms of labour law?

# CONTEXT

## **Developments of worrying trends in labour law reforms**

- Important deregulatory measures
- Intrusive overhauls of labour codes
- fundamental changes to industrial relations structures and processes

## **In all members states:**

- Memorandum of understanding (program countries)
- Country specific recommendations (yearly basis)

## **Why?**

Deregulatory measures are supposed:

- to lead to more flexible labour markets
- to prevent / reduce labour market segmentation

# CONTEXT

Most measures run counter the obligations member states have under

- Fundamental ILO and Council of Europe standards and
- EU norms
- National constitutional provisions

## WHAT ARE THE DEREGULATORY MEASURES ?

1. Working time
2. Atypical employment
3. Employment protection law (redundancies rules)
4. Industrial relations and collective bargaining systems
5. Reforms of the judiciary – access to justice

# WHAT ARE THE DEREGULATORY MEASURES ?

## 1. Working time

- Allowing to extend working time duration (by extending maximum working time and making changes to overtime and time offs provisions)
- Extend possibilities for overtime and night work - Change in compensation for overtime rules.
- Conversely to allow to shorten working time duration (short time work )
- Allowing to accommodate the allocation of working time to demand/need of business – extension of references periods

## WHAT ARE THE DEREGULATORY MEASURES ?

2. Atypical employment: fixed term work, part time work, temporary agency work (regulation aims at providing protection against unequal treatment and discrimination)

- Expanding objective reasons justifying renewal
- Extending maximum total duration of successive contracts
- Increasing the number of renewals
- Increase of 'involuntary' part time work
  
- Creation of 'new' types of contracts for target groups (i.e. young workers) with less protection

# WHAT ARE THE DEREGULATORY MEASURES ?

## 3. Employment protection

- **Definitions** of redundancies for economic reasons
  - Altering the definitions of economic reasons
  - More flexible grounds for individual dismissals
  - New conditions/thresholds
- **Procedure**
  - Altering notification periods in a less favourable way
  - Simplifying procedures of information and consultation and losing 1/3 party intervention
  - Social plans
  - Restricting access to employment tribunals
- **Costs**
  - Lowering the severance pay entitlement / qualification periods, redundancies benefits
  - Introducing sanctions for appeal
  - Enhancing recourse to public funding

## 4. Changes to industrial relations and collective bargaining systems

- Decentralisation of collective bargaining to company level
- Deviate *in pejus* to higher level collective bargaining / statutory rules
- Amendments to representativeness criteria
- Moving TU prerogatives to works councils or to workers representatives
- Diminishing role of social dialogue institutions

## 5. Reforms of the judiciary – access to justice

- Introduction to mandatory (private) alternative dispute resolution mechanisms
- Reduction to access to judicial and/or administrative procedures
- Introduction of fees to lodge a complaint
- Increase of fees in case of appeal
- Introduction of seniority requirement to lodge a complaint

# EFFECTS OF THE CRISIS

**Violation of international fundamental social rights**

**Violation of constitutional rights**

**Violation of European law**

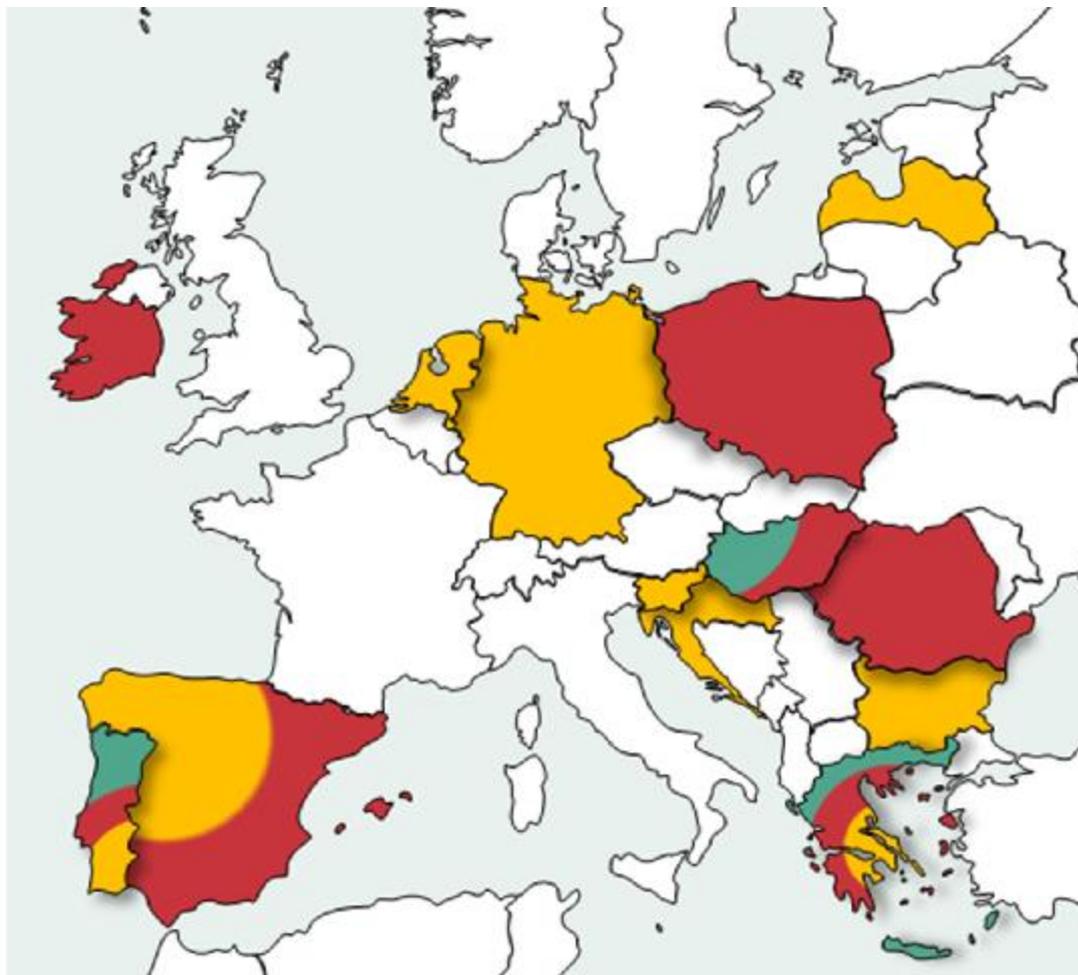
# EFFECTS OF THE CRISIS

## LEADING TO COMPLAINTS TO:

1. Council of Europe cases (GR, HU, SL)
  - Cases 65 and 66/2011
  - Recent collective complaints on austerity measures in pension field from Greece
2. ILO – Case 2820 (November 2012)(GR)
3. Constitutional reviews against austerity provisions
4. Complaint to the CJEU (EE)

# EFFECTS OF THE CRISIS

## LITIGATION ACTIONS IN THE EU – JUNE 2013



-  International:  
ILO, other UN texts
-  European:  
Council of Europe, EU/CJEU
-  National:  
(Constitutional) court, human rights  
commissions, ombudsman, referenda,  
etc.

# 1. COUNCIL OF EUROPE

**ECSR** ‘considers that while it may be reasonable for the economic crisis to prompt changes in current legislation and practices to restrict certain items of public spending or relieve constraints on businesses, **these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter**’.

‘The Committee considers that a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should **not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations**’.

# 1. COUNCIL OF EUROPE

ECSR concluded for complaint 65/2011:

- Unanimously: **violation of Art. 4** regarding the possibility for dismissal without notice or compensation during the probation period in an open-ended contract

# 1. COUNCIL OF EUROPE

**Appendix to Resolution** : Answer by Greece to the conclusions of the ECSR (25.10.2012) in which:

- It accepted the conclusions of the ECSR
- it pointed out that the measures were of a **provisional nature**.
- the Greek Government had the firm intention to revoke these measures **as soon as the economic situation of his country would allow**. However, no timeframe could be given and very unlikely that impact of reform is clear before 2015

**Committee of Ministers Resolution CM/ResChS(2013)2 and 3:** confirmed the violations and called upon the Greek government to revoke the above-mentioned measures as soon as possible and keep the Committee of Ministers regularly informed of all progress made.

# 1. COUNCIL OF EUROPE

The complaint 66/2011 alleged:

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

# 1. COUNCIL OF EUROPE

ECSR considers:

- **the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter.**
- Governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries most need the protection. I
- that what applies to the right to health and social protection should apply equally to labour law.
- While it may be reasonable for state parties to respond to the crisis by changing current legislation and practice to limit public expenditure or relieve constraints on business activity, **such measures should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.**

# 1. COUNCIL OF EUROPE

ECSR considers (continued):

- that measures taken to encourage greater employment flexibility with a view to combating unemployment should not deprive broad categories of employees of their fundamental rights in the field of labour law, which protect them against arbitrary decisions by their employers or the worst effects of economic fluctuations. **The establishment and maintenance of these basic rights is a core objective of the Charter.”**

**Committee of Ministers Resolution 2013(2) is identical as in collective complaint 65/2011**

# 1. COUNCIL OF EUROPE

## **Cases 80-76/2012: 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)

# 1. COUNCIL OF EUROPE

ECSR considers:

- Unanimously in all 5 cases a violation of Art.12§3 ESC:  
'The right to social security as the to endeavour to raise progressively the system of social security to a higher level'
- Basically that “even though restrictions to the benefits available in a national social security system do not under certain conditions breach the Charter, the cumulative effect of restrictions made as austerity measures, together with the procedures applied to put them into place, amounted to a violation of the right to social security.”

# 1. COUNCIL OF EUROPE

ECSR considers (continued):

**“The fact that the **contested provisions of domestic law seek to fulfill the requirements of other legal obligations** (Troika loan arrangements) **does not remove them from the ambit of the Charter.**”**

Despite the later international obligations of Greece, there is nothing to absolve the state party from fulfilling its obligations under the 1961 ESC.”

## 2. ILO COMMITTEE OF FREEDOM OF ASSOCIATION (1)

- ILO CEACR observations /direct requests 2011-2012 of GSEE in 2010 on 12 conventions (CEACR reports 2011/2012)  
C122 on Employment Policy: BU, ES, FI, HU, LT,  
C150 on Labour administration: PT
- ILO – 365<sup>th</sup> Report of the Committee of freedom of association (316<sup>th</sup> session 1-16 /11/ 2012) : Greece: *Case No. 2820 (Greece)*:  
Suspension of and derogation to the collective agreements via Decree (Austerity measures) as a violation of ILO C98  
Derogation *in pejus* and decentralisation of collective bargaining as a violation of ILO C87 and C98

## 2. ILO COMMITTEE OF FREEDOM OF ASSOCIATION

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‘While deeply aware that these measures were taken within a context qualified as grave and exceptional, provoked by a financial and economic crisis, the Committee found that there were a **number of repeated and extensive interventions into free and voluntary collective bargaining and an important deficit of social dialogue** and thus highlighted the need to promote and strengthen the institutional framework for these key fundamental rights.

The Committee expects that the **social partners will be fully involved in the determination of any further alterations within the framework of the agreements with the Troika that touches upon matters core to the human rights of freedom of association and collective bargaining and which are fundamental to the very basis of democracy and social peace.**

## 3. CJEU

- Pringle v. Gov. of Ireland - (CJEU C-370/12)

directly addresses:

- the compatibility of the EMS with the no bail out clause
- legal validity of adopting crisis measures in the form of intergovernmental acts in the area of exclusive competences of EU
- Recourse to an accelerate procedure
- Lack of involvement of the (EU) parliament

## 4. NATIONAL CONSTITUTIONAL REVIEWS

- Estonian Supreme Court (Riigikohus) in a judgement of 12 July 2012 Case No. 3-4-1-6-12 □ Art. 4 (4) ESM Treaty violates the principle of sovereignty in Estonian Constitution
- The Hague District Court of 1 June 2012 (Wilders e.a. v. State of the NL): ESM violates Art. 125 TFEU (no bail out clause)
- German Constitutional Court (12 Sept 2012) has rejected legal challenges to the creation of a permanent bail-out fund, but not without imposing restrictions on the size of the country's contribution.
- German Constitutional Court (March 2014)
- Greek Constitutional Court: (7 Nov 2012) (Areios Pagos) unanimously ruled that the new cuts in judges' and prosecutors' wages were against the Greek Constitution

## 4. NATIONAL CONSTITUTIONAL REVIEWS

- Portuguese Constitutional court Decision of 5 April 2013 has rejected 4 of the 9 austerity measures drawn up by the government, based on the adjustment programme Portugal agreed with the European Union (EU) and the IMF in May 2011.
  - The court rejected cuts in public-sector pay and state pensions, cuts in pensioners' and public servants' holiday bonuses, as well as reductions to sickness leave and unemployment benefits that were in breach of the constitution
- Portuguese Constitutional court Decision of 2 June 2014 has rejected austerity measures drawn up by the government, based on the renewed adjustment programme Portugal agreed with the European Union (EU) and the IMF.

## EFFECTS OF THE CRISIS

- Violation of international treaties/ TEU/ constitutional law
- Negative Impact on Health And Safety
- Worsening of Working Conditions
- High Unemployment Rate
- Segmentation of The Labour Market
- Negative Impact on Wages
- Lower Purchasing Power
- Increase of Social Exclusion
- Temporary reforms => permanent reforms: it proves difficult to revert to more favourable provisions
- However, (parts of) reforms seems unable to mitigate crisis

## FLEXICURITY?

- Where is the security counterpart to flexibilisation?
- If flexibilisation is required, why should it be on the expenses of workers rights?
- Has the crisis be an 'false' excuse to legitimate reforms of labour law?
- How is it possible that (EU) anti crisis management leads to violation of fundamental social rights?
- Is flexibilisation of the labour market through the deregulation of labour law the right answer to the crisis?
- Is flexicurity in reality just flexibilisation?