

## DISMISSAL PROTECTION IN EUROPE

### Legal foundation

The legal foundations of dismissal protection range from rather rudimentary “models” (United Kingdom, Denmark) to those with detailed regulations (above all Spain, Portugal). In the last ten years there have been numerous amendments to dismissal protection laws. They have basically led to a moderate liberalisation (Netherlands, Spain, Portugal) and were often connected with an easing in the regulations governing part-time and limited-term employment contracts. Whereas in the majority of the countries studied statutory dismissal protection prevails, in Denmark collective agreements regulate dismissal protection for workers.

### Procedural regulations

It is noticeable that with respect to procedural rules for dismissal protection most countries do not have a threshold level for small businesses. French and Spanish laws are differentiated not by excluding small businesses from dismissal protections but by reducing their obligations with respect to severance pay (France: no obligatory compensation; Spain: reimbursement of severance pay from a fund).

The time limit for filing dismissal lawsuits is three weeks in Germany, three months in the UK, a year in Portugal and five years in Denmark. Austria has an extremely short time limit of only one week. This time limit has a prohibitive effect, i.e. it often results in employees failing to file charges.

### Monitoring intensity

The monitoring of dismissals is carried out in all countries by the labour courts, in some cases combined with an inspection by the Labour Office. The intensity of these controls is difficult to evaluate. With this restriction in mind it can be said that the control intensity, especially in cases of (economic) redundancies, goes considerably further in France and Spain than in Germany. There the court investigates more thoroughly the “appropriateness” of economic decisions. In this connection procedural regulations appear, however, to be equally impor-

tant: in the Netherlands, Spain, and to a certain degree also in France and Portugal, the Labour Office exercises a preventive control that involves considerable time and has a considerable impact on the entire process. The same is true for the strong position of the Workers’ Council in Austrian dismissal law.

### Severance pay/continued employment

In all the (examined) countries severance pay is the cornerstone of dismissal compensation but it is predominantly combined with the possibility of further employment or rehiring, i.e. the employee, in some cases also the employer, has a right to choose. In this context it is noticeable that many of the studied countries, particularly in cases of redundancy due to economic reasons, provide for “obligatory severance pay” which is paid independently of redundancy justification (UK, de facto in the Netherlands, Denmark, Austria, France, Spain, Portugal). This compensation is, however, lower than that paid for justifiable dismissals, which also has a sanctioning effect. An unusual model worthy of attention is the Austrian right to statutory severance pay (Abfertigung) from a private sector fund financed by employers contributions.

It is noticeable that the statutory regulations of many countries have developed a variety of “techniques” for terminating a contract with severance pay as compensation. In the Netherlands an offer of severance pay increases the prospects of receiving permission for dismissal from the local Labour Office. In Austria the statutory compensation, which as explained above is administered by a fund, helps to support the decision on the part of the dismissed employee to give up his job without recourse to a lawsuit. In France both employee and employer can refuse further employment and claim severance pay in cases of individual dismissals. In Spain the settlement quota for severance pay is high because (only) the employer has the right to choose between dismissal pay and further employment. In Portugal it is the employee who has the choice between further employment and severance pay. There, too, practice shows employees tend to choose severance pay.

Nevertheless, it would be short-sighted to reduce the core of dismissal protection in Europe to mere compensation in the form of dismissal pay. Here the

## Dismissal protection regulations in selected EU member states

|  | Germany   | United Kingdom   | Denmark   | The Netherlands   | Austria  | France   | Spain   | Portugal  |
|--|---|--|---|---|--|--|---|---|
| Dismissal protection (DP) regulated by law?                              | Yes   | Yes  | Only for salaried employees. In addition regulations through collective agreements  | Yes. Corporation must have dismissal approved by labour authorities or go directly to courts.   | Yes  | Yes  | Yes   | Yes   |
| Threshold levels for application of dismissal protection                 | 10 employees (temporary rule)   | No   | According to some collective agreements, 10 or more employees   | No  | 5 or more employees  | 11 or more employees (but with weakened statutory protection for fewer)  | No. With fewer than 25 employees, state funds provide 40% of severance pay.   | No  |
| Time limit for filing lawsuit  | 3 weeks   | 3 months   | -   | -   | 1 week   | No   | 20 working days   | 1 year  |
| Legal action possible to maintain employment                             | Yes   | In principle yes, but corporation can avoid re-employment by increased severance pay.  | No. Exceptions in basic collective agreement  | Yes. Work contract is not terminated until permission granted or dismissal approved by court.   | Yes  | In principle yes, but if court approves dismissal, corporation has the right to appeal.  | In principle yes, but if court approves, corp. has the right to decide between severance pay and re-employment.     | Yes. In cases of dismissal for bad conduct and due to technological change  |
| Monitoring by labour courts in case of redundancies for economic reasons | Inspection only to see if economic grounds are valid. Inspection of further employment possibilities, social criteria for redundancy. Special procedures for mass dismissals. | Examination of whether company's decision is understandable. Further employment possibilities must be considered, few standards with respect to social criteria. | Minimal monitoring. In collective agreements justification required, independent of reason for dismissal. For employees only investigation of whether decision to dismiss is arbitrary. | Approval procedures: minimal examination. Rejection in only 15% of cases. Legal action: in general the court finds for the corporation; no appeal possible. | Only monitored if redundancy is due to economic reasons. Expert opinion on employment prospects, social criteria required. | Monitoring of corporation's decision, social criteria required also with respect to employment prospects. Special procedures in case of mass dismissals. | Monitoring of corporation's decision (emergency situation required). Special procedures in case of mass dismissals. | Strict regulations. Transfer of employee must be impossible, strict social criteria, special procedures in case of mass dismissals. |
| Severance pay claims regardless of social justification                  | No  | Yes, decided by courts. Basic severance pay including additional compensation in case of no justification  | Yes. For employees after 12 years of employment   | No  | Yes. Right to settlement in addition to general dismissal protection. Financed via insurance system                        | Yes. After 2 years of employment. In case of procedural violations additional compensation   | Yes. Compensation must be received with notice of dismissal otherwise dismissal is null and void.                   | Yes in cases of redundancy due to economic reasons  |

Source: Zachert 2004.

above-mentioned preventive function of dismissal protection laws plays a role. Even if it is difficult to evaluate empirically, there are indications that the laws have an impact on dismissal protection in practice. This is very clear in the requirement of an ex-ante consent for dismissal by the Labour Office (Netherlands, Spain, in weakened form also France and Portugal) or the representation of employees' interests in Austria. Furthermore the length of administrative or legal proceedings also plays a role as well as the uncertain results, including the possibility – from the employers' viewpoint a "risk" – that the dismissed employee must be given further employment or re-employment. Finally high severance pay can also result in the employers' exercising restraint from "ill-considered" dismissals. In Germany severance pay is set at half a month's pay per year of employment, in the Netherlands at a month's salary per year of employment. Austria requires two months' pay per year of employment after three years (present regulation); France requires one tenth of a month's salary per year and at least six month's salary in cases of non-compliance with substantive law. In Spain approximately one and a half months' salary is paid per year of employment and in Portugal one months' salary per year of employment as well as at least three months' compensation as the standard severance pay.

### **Dismissal protection lawsuits**

Only rough estimates can be made about the effect of lawsuits, also in terms of their frequency. Without doubt Germany ranks highest with respect to the number of dismissal protection lawsuits. It is impossible, however, to make any conclusions about the efficiency of the dismissal protection on this basis. One reason is that in Germany, only approximately 11 percent of those dismissed file a lawsuit. Secondly in other countries arbitration supplements legal procedures or even completely replaces them (in the UK and Denmark). In the Netherlands half of cases are decided either by the Labour Office or the courts before dismissal takes place. Furthermore, out-of-court settlements (agreement to annul contract) must be included in the evaluation. In several countries these seem to play an important role (in the UK and the Netherlands, in part with the help of the Labour Office).

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### **Reference**

Zachert, U. (2002), "Kündigungsschutz, Befristung und Leiharbeit in Europa", *WSI-Mitteilungen* 3, 132-37.