

EU EQUALITY LAW IN THE LIGHT OF THE FINANCIAL CRISIS

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How the crisis has affected social legislation in Europe?

- Publication of the research : Quel droit social dans une Europe en crise?, (coordination M.-C. Escande Varniol, S. Laulom, E. Mazuyer) Larcier June 2012

Presentation Plan

- 1. How the crisis has affected social legislation in Europe?
(Presentation of a research)
- 2. Consequences on EU Equality Law

The research

- 11 countries analysed : Austria, Belgium, France, Germany, Greece, Hungary, Italy, Poland, Spain, United Kingdom, Sweden
- What was the situation before the crisis?
- Which measures were adopted (in both labour law and social protection law)?
- Has the crisis acted as a catalyst for in-depth reforms?
- What relationships between flexicurity and the measures adopted

Some difficulties

- Very different situations among the countries
- Constant reforms

Two stages in the crisis

- First stage (2008-2009) : managing the crisis in employment
- Second stage : the public debt crisis

First stage of the crisis

	Partial Unemployment	Flexible organisation of working time	Measures to support purchasing power	Measures for those in insecure employment	Vocational training measures
Germany	x		x	x	x
Austria	x	x			x
Belgium	x	x	x		x
Spain	x	x		x	x
France	x		x		x
Greece	x				
Hungary	x	x	x		x
Italy	x		x		
Poland	x	x		x	x
U.K.			x		
Sweden	x		x		x

Characteristic of these measures

- Temporary measures
- They did not required large-scale reforms
- A rethinking of social law?
- These measures had the initial effect of giving renewed credibility to certain social policy mechanisms and legal provisions which had previously been considered as mere hindrances to the economy.

The second stage : 2010 -

THE PUBLIC DEBT CRISIS

Second stage of the crisis

	Pay freeze or cuts in the civil service, Reforms	Decentralisation of collective bargaining	Reduction in social welfare benefits and allowances	Challenges to employment legislation protection	Pension Reform
Germany		×	x(before)	x(before)	× (before)
Austria					
Belgium					×(debates)
Spain	×	×	×	×	×
France	×	×		×	×
Greece	×	×	×	×	×
Hungary	×		×	×	
Italy	×	×	×	×	×
Poland	×				
U.K.			×	x(debates)	
Sweden		×		x(debates)	× (before)

Role of social partners

- In some countries (Sweden, Germany, Austria), the crisis seems to have strengthened the role and function of the social partners
- In other countries : temporary or long-term marginalisation of the social partners has been one element of the anti-crisis policies
- Decentralisation of collective bargaining and introduction of new possibilities for companies to opt out in peius

And what about flexicurity?

- More flexibilities
- More insecurities

Consequences on EU Equality Law

What has been the evolution of EU equality law since 2008?

- Legislation
- Case Law
- Policies

The Evolution of EU Legislation

- Nothing has happened
- Proposal for a new directive on pregnant women could not be adopted. In 2011, the EU ministers decided by a majority to reject the text voted by the Parliament (extension of the maternity leave from 14 weeks to 20 weeks on full pay, recognition of a paternity leave of 2 weeks). One of the reasons was the cost of the measure
- According to the conclusions of the Employment Social Policy Council meeting in June 2012, 'a great deal of work still needs to be done' to reach an agreement on a new directive to prohibit discrimination on the grounds of religion or belief, disability, age or sexual orientation in social protection, education and access to goods and services

The evolution of EU Case Law

EU policies

- Priority is given to the reform of public finances by means of austerity
- No real attention to the consequences on these measures on gender

EU Policies

- Strategy for equality between women and men 2010-2015 (COM (2010) 491 final : « In order to achieve the objectives of Europe 2020, namely smart, sustainable and inclusive growth, the potential and the talent pool of women need to be used more extensively and more efficiently ». The crisis is not mentioned in the document
- Commission staff working document, Progress on equality between women and men in 2011 (SEW (2012) 85 final, « The crisis and the responses to the crisis have had different impacts on women and men. As there is high pressure to fight the economic downturn, progress towards gender equality risks being considered as an objective that can be postponed. However, the equal treatment of women and men should be understood as contributing to economic success ».

What could be the role of the existing EU equality law?

- - See Reference for a preliminary ruling Case C-128/12, Questions referred in March 2012 by the labour tribunal of Porto
- 1. Must the principle of equal treatment, from which the prohibition of discrimination derives, be interpreted as being applicable to public sector employees?
- 2. Is the salary cut made by the State, applicable only to persons employed in the public sector or by a public undertaking, contrary to the principle of prohibition of discrimination in that it discriminates on the basis of the public nature of the employment relationship?

Case C-128/12

- 3. Must the right to working conditions that respect dignity, laid down in Article 31(1) of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that it is unlawful to make salary cuts without the employee's consent, if the contract of employment is not first altered to that effect?
- 4. Must the right to working conditions that respect dignity, laid down in Article 31(1) of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that employees have the right to fair remuneration which ensures that they and their families can enjoy a satisfactory standard of living?
- 5. As a salary cut is not the only possible measure and is not necessary and fundamental to the efforts to consolidate public finances in a serious economic and financial crisis in the country, is it contrary to the right laid down in Article 31(1) of the Charter of Fundamental Rights of the European Union to put at risk the standard of living and the financial commitments of employees and their families by means of such a reduction?
- 6. Is such a salary cut by the Portuguese State contrary to the right to working conditions that respect dignity in that it was unforeseeable and unexpected by the employees?