

Assessment of constitutionality of amendments to the Portuguese Labour Code

The Law n. 93/2019 of 4 September 2019 amended some provisions of Portuguese Labour Code (“PLC”) notably, in respect to trial period, very short-term employment contracts and elapsing of collective bargaining agreements (“CBA”).

Upon the entry into force of said Law, a group of MP’s to the requested the Constitutional Court to assess the compliance with the Constitution of the Portuguese Republic (“CPR”) of the following amendments:

- Extension of the trial period from 90 to 180 days in the employment contracts of first job seekers and long term unemployed [pursuant to article 112, paragraph 1, subparagraph b), iii)] of PLC, on the grounds of the breach of the principle of equality and the right to employment stability, as set out in articles 13 and 53 of CPR.
- Wider admissibility of very short-term employment contracts and the increase of its maximum duration (pursuant to article 142 of PLC), also under the above-mentioned grounds.
- Determination, by law, of the termination of the CBA in cases of extinction of the signatory union or employers' association [pursuant to article 502, paragraph 1, subparagraph b), iii) of PLC], for breach of the principle of proportionality and the right to collective bargaining, as stated in articles 18, paragraph 2 and 56, paragraph 3 of the CPR.

Recently, on 7 June 2021, the Constitutional Court issued the Decision n. 318/2021, which addressed the raised constitutionality issues, as follows:

1. Extension of the trial period to 180 days

The Constitutional Court considered that, in general terms, the extension of the trial period from 90 to 180

days for first job seekers and long term unemployed does not breach the CPR.

However, in the specific situation of first job seekers who have been previously employed by other employer(s) for 90 or more days under a fixed-term employment contract, the Court considered that, upon completion of said period of employment, the employees have acquired the necessary professional experience in terms that do not justify the extension of the trial period to 180 days.

In those cases, the admissibility of such trial period extension would violate the principle of equality by comparison with first-time job-seekers without previous work experience.

2. Very short-term employment contracts

Regarding the extension of the admissibility of this type of contract to any sector (besides agriculture and tourism) and the increase of its maximum duration to 35 days, the Court ruled that article 142, paragraphs 1 and 2 of PLC does not breach the CPR.

3. Elapsing of CBA as a result of the extinction of any of its parties

In respect to the new ground for elapsing of a CBA - the extinction of any of its parties, whether a trade union or employers' association - the Court ruled that article 502, paragraph 1, subparagraph b) of PLC, does not breach the CPR, particularly the essential terms of the right to collective bargaining.

The Decision n. 318/2021 of the Portuguese Constitutional Court can be accessed [here](#).

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