

Employment & Labour - Greece

New laws (almost) get rid of obligatory arbitration

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Background

More than 20 years ago, Law 1876/1990 established the Organisation for Mediation and Arbitration (OMED) and a mediation/arbitration system for collective labour disputes. According to such system, a union and/or an employer could ask the OMED to mediate on any collective labour dispute. The mediator was occasionally appointed by common agreement, or more often selected from a list. At the end of the 20-day mediation process, the mediator filed his or her proposal and the parties had five days to accept or reject it. If one of the parties accepted the proposal (usually the union) and the other rejected it (usually the employer), the accepting party had the right to impose a legally binding arbitration procedure on the rejecting party, the result of which was usually worse for the employer than the mediator's proposal. However, the employer had no right to participate in such process and was required to respect the arbitrator's decision. The arbitrator was selected in the same manner as the mediator, from the same list.

Legal objections were raised against this system. It was argued that it was contrary to International Labour Organisation Convention 154 concerning the promotion of collective bargaining, as it introduced an obligatory arbitration process. The OMED responded that:

- the arbitration process was not obligatory, as it intervened only if a party refused to accept the mediator's proposal (an argument that obviously lacks merit, as it would tend to qualify the judicial system as non-obligatory since it does not intervene if the opposing parties reach a settlement agreement); and
- the system allowed the resolution of labour disputes without any industrial action and social unrest (a serious practical argument, at least for some).

Regardless of legal arguments, in practical terms the system functioned as follows. Ninety percent of mediators and arbitrators were pro-labour. They were union lawyers and consultants and – most importantly – honestly believed that:

- salary increases should be granted every year;
- the employer's financial results could be disregarded; and
- they should accept at least some union demands, no matter how unreasonable.

Soon unions were filing entirely unreasonable requests (eg, salary increases of 20%) in order to ensure that they would be awarded a sum deemed to be more than reasonable. In fact, in many cases the word 'reasonable' almost lost its meaning.

For example, Arbitration Decision 37/2009 regarding the employment terms and conditions of banking employees was issued on September 29 2009. Disregarding the global financial crisis, as well as the national crisis, the arbitrator ordered salary increases of 5.5%. This provision was modest considering that Arbitration Decision 38/2008 (September 12 2008) ordered salary increases of 8% for the same banking employees.

In other words, the OMED and the mediation/arbitration system, at least as they functioned in practice, contributed to Greece's financial problems. Something had to change.

New laws

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Law 3899/2010 amended the system. The key provisions of the law are as follows:

- All mediators and arbitrators have been replaced and the obligation of objectivity and impartiality has been emphasised.
- An arbitrator is expressly obliged by law to consider seriously the employer's financial condition and competitiveness.
- Arbitration is no longer appropriate for all labour disputes, but only those relating to the determination of basic salary.
- Each party may request a three-member committee rather than a single arbitrator.
- Contrary to the previous situation, the law has granted the courts authority to review the arbitrator's decision.

At the same time, Law 3871/2010 prohibits arbitrators from granting salary increases until June 30 2011. From July 1 2011 until June 30 2012, it allows arbitrators to grant salary increases, but only up to the level of change in European annual inflation during 2010 (eg, 0.8%), and from July 1 2012 until December 31 2012 the cap will be the change in European annual inflation during 2011.

Comment

Greece has belatedly realised that continuously high annual salary increases have hurt its economy and prejudiced its employees. However, at the same time, the unions continue to have a stranglehold on the political process and wield considerable influence (although membership is below 20%). Consequently, the new laws are a compromise between what needs to happen and what the unions will allow to happen. Nevertheless, it has since become obvious, even to the unions, that the OMED (as an arbitrator) and the whole arbitration process are incompatible with a free society, and do not enhance Greece's chances of redressing its dire financial situation. As expected, the OMED system, already devoid of any real meaning, will soon be completely redundant.

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