EMPLOYMENT LAW

Starting off our focus on Employment Law, here *Lawyer Monthly* talks to Mikaël Pelan, Partner at Lusis Avocats, a Paris-based law firm that specialises in employment law.

How focused is French employment law on protecting the employee, in comparison to other European countries, such as Germany for example, which is very heavily focused on this?

The protection of the employee is at the centre of the French labour law. It must be said that the very reason for the existence of this regulation is the protection of the employee who is considered as the weak party in the employment relationship. Since whilst signing an employment contract he/she enters into a relation where he/she is economically dependent and he/she will be subordinated to the employer, it is considered necessary to introduce rules which provide him/her with some form of protection.

The employment contract is seen less as the result of a bargain between equals than an adhesion from a weak party to the agreement, of which terms and conditions are designed by the other party. In addition to that first consideration, one should take into account that this matter is heavily politicised.

What impact does this have on employers?

The consequence of this conception of the labour law regulation is the existence of a relatively abundant regulation. This implies that employers should take into consideration the existence of this regulation whilst planning an operation. It is perfectly possible to conduct an activity, provided one is well counselled and able to plan in advance its operations. Of course this means that for small businesses, or when there is the necessity to take very urgent measures, the situation is a bit more complicated to handle.

The main idea however, is to keep in mind that this matter should be a priority on any employer's agenda; it is a condition required to be able to use this regulation as a tool to create opportunities.
At the end of the day it is the employers, who need more flexibility and who are less equipped to face legal challenges, which are the most vulnerable to that situation: i.e. small and medium-sized companies.

Do you think the laws should be changed at all? If so, how?

Basically, the three main issues with the regulation are the following: its instability, since it is highly political each government tries to influence this matter. The consequence is its complexity, regulators barely reform this matter

and tend to add successive layers to the previous ones, and therefore there is a real lack of flexibility.

A change is, I guess, desirable and should take the shape of a comprehensive reform, in order to avoid an additional layer of regulation, and introduce more transparency for both employers and employees. It should also give more room to the individual negotiation, and this does not mean that the regulator should forget the principle of protection, but it is necessary to introduce more freedom.

Finally, the regulator should provide the employers and the employees with more stability, hence a preference towards global reform rather than several and repetitive changes which create more confusion.

France is subject to strict employment and labour laws – just how strict are they and how complex can ensuring compliance with them become?

As indicated, the real issue is the instability of the regulation, its stratification, and therefore the difficulty to have a clear picture. In addition, some of those regulations appear almost as a formal obligation, which means that irrespective of the real situation, what will be taken into consideration will be the compliance with a formality more than with the spirit and the aim of a specific rule.

What are the consequences of a breach of employment law on behalf on an employer?

It really depends, most of the obligations provided by French labour law regulation result in damages awarded to the employee. More rarely, the employee can ask for a reinstatement for specific cases only (discrimination, moral harassment and fundamental rights violation). Additionally, in some cases the employer might be criminally liable (regulation on health and safety, working time and employees' representative bodies).

Do you find that public or private organisations raise the most complex cases?

Public organization comes, for most of its personnel, under a specific regulation which is distinct from labour law. However, some of their personnel can be hired under the labour law regulation. Also, sometimes government services are performed by private organizations, in which case the labour law applies. In some situations, which are quite interesting given their complexities, organizations will apply both regulations depending on the employee situation.

What challenges do you find particularly rewarding to overcome within your work as an employment lawyer?

Basically, being an employment lawyer means dealing most often with complex cases. With that complexity comes the necessity of a thorough analysis of the capacity to take into consideration all the various aspects of a given project and to build up a strategy from the beginning. That situation, in a challenging environment, is of course rewarding.

Reorganization and restructuring, in the cases of acquisition, merger or downsizing, are of course the most interesting operations since they imply a vast range of situations from the preparation of the full project to its day to day implementation.

Due to its complexity, the labour law must be integrated from the first step of an operation of this type and is an important part of the success of a given project. This gives the employment lawyer the opportunity to participate in the client's most important development projects with a real implication.

How has the French employment landscape evolved since you started practicing in 2000?

There are three main points that I can think of, two of which are closely linked. The 35 hours' a week arrangement has profoundly changed the organization of companies in various manners.

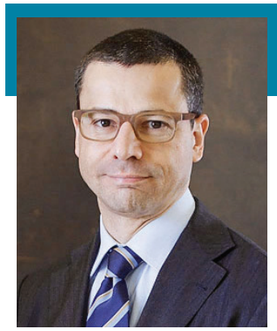
On the positive side, it has had an impact on the importance of negotiation in the company, since it is on the basis of company agreements that it is often possible to organize the working time in an efficient manner (that is the reason why small and medium size companies are those for which the regulation is more challenging since they do not necessarily have the possibility to conduct such negotiations).

On the negative side, this regulation has created a tension on the subject pertaining to the time which is considered worked, and therefore that has to be taken into account for the 35 hours' a week calculation, hence reducing the room for flexibility and tolerance in a sensible manner. It is therefore not a surprise that this question is now finding a new ground of contention within health and safety employee protection.

Working time arrangements are now challenged on the grounds of the protection of employee safety and security (and it has to be noticed that the issue of moral harassment was raised at the same time as the 35 hours' a week regulation was introduced).

Finally, a relatively new interesting trend is the notion of transparency, the main idea behind the recent regulation is the notion that employers are given some security on the processes they implement, provided they ensure the employees, and particularly the employees' representatives, with fair and complete information.

This is particularly true with the information consultation processes, where employers are now granted with time limitation, so they can plan the duration of such a process, provided they disclose a complete and fair information to the employee representatives. **LM**



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