COMPARATIVE LABOR LAW DOSSIER
DISMISSAL DUE TO BUSINESS REASONS

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Abstract

The Comparative Labor Law Dossier (CLLD) in this issue 1/2018 of *IUSLabor* is dedicated to dismissal due to business reasons. We have had the collaboration of internationally renowned academics and professionals from Belgium, France, Germany, Greece, Italy, Portugal, Spain, Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Uruguay and Canada.

El Comparative Labor Law Dossier (CLLD) de este número 1/2018 de IUSLabor está dedicado los despidos por causas empresariales. Se ha contado con la participación de académicos y profesionales de prestigio de Alemania, Bélgica, España, Francia, Italia, Grecia, Portugal, Argentina, Brasil, Chile, Colombia, Costa Rica, República Dominicana, Uruguay y Canadá.

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Summary

DISMISSAL DUE TO BUSINESS REASONS IN PORTUGAL

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Introduction

In Portugal, the main principles concerning the termination of the employment contract are embodied in the Constitution. According to article 53 of the Portuguese Constitution (Job security), "Workers are guaranteed job security, and dismissal without fair cause or for political or ideological reasons is prohibited". Hence, a termination of the contract by the employer, namely a dismissal, always requires a cause, which might be either subjective or objective. The objective cause concerns mainly business reasons.

The Labor Code contemplates three different situations of termination of the employment contract that can be based on business reasons: *i)* collective redundancy; *ii)* dismissal by extinction of the work post (*despedimento por extinção do posto de trabalho*); *iii)* expiry (*caducidade*) of the employment contract due to the total and final closing of the company.

The 2003 Labor Code expanded the expiry of the labor contract substantially and, at the same time, facilitated collective redundancies significantly, an option that the 2009 Labor Code has not altered.

As a matter of fact, the present Portuguese labor law system is something of a paradox, since it provides a rather strong protection of the employee against disciplinary dismissals but has much less demanding requirements when collective redundancies are at stake – it is therefore rather easy to get rid of an unwanted employee, simply by including them in a collective dismissal. Simultaneously, it is generally considered easier and safer for the employer to go for a collective redundancy rather than a dismissal by extinction of the work post.

The economic and financial crisis led the Portuguese State to request financial assistance from the European Commission, the European Central Bank and the International Monetary Fund (the so called "Troika"), which was granted on May 2011 under the terms of the European Financial Stabilization Mechanism. In exchange, this required a commitment to a three-year austerity plan laid out in the Memorandum of Understanding on Specific Economic Policy Conditionality (MoU). The MoU prescribed several labor market reforms in a broad group of areas, including

employment protection legislation. As a consequence, in 2012, a new revision of the 2009 Portuguese Labor Code took place, introducing additional flexibility to the legal framework on lawful dismissal. Since the Portuguese Constitution grants strong protection against unfair dismissal (namely the disciplinary one) and collective dismissal was already very flexible, legal adjustments were addressed to the individual dismissal linked to the extinction of the work post and to the general reduction of the severance payment. Yet, some of the measures implemented were later reversed by the Constitutional Court, as it will be mentioned.

During the crisis, the number of companies involved in collective redundancies went up, rising 118% in 2011 compared to the previous year, reaching its peak in 2012 with a 203% increase compared to 2010. This trend reversed in 2013 as these numbers dropped and continued to decline until the last data available (2017).

The number of companies involved in collective redundancies rose to 785 in 2011, peaked to 1269 in 2012 and started declining to 990 in 2013, 664 in 2014, 537 in 2015, 421 in 2016 and 396 in 2017. The number of workers dismissed was, on average, 9 workers per company: 6.526 in 2011, 10.488 in 2012, 9262 in 2013, 6.216 in 2014, 5.236 in 2015, 4.712 in 2016 and 3.478 in 2017. In all situations, the number of workers dismissed was inferior to the number of employees included at the start of the procedure, which could indicate that some thousands of jobs might have been saved by the procedure itself. However, the reality is that many of the employees affected accepted ending their employment contracts by mutual consent, partly justifying the reduction of the final number of dismissals. (Cf. DGERT, *Evolução anual dos despedimentos, 2005-2017; Livro verde sobre as relações laborais 2016*, Gabinete de Estratégia e Planeamento do Ministério do Trabalho, Solidariedade e Segurança Social, Lisboa, 2016, pages 291-292).

In relation to the dismissal by extinction of the work post, since 2009, the number of workers affected ranged from just over forty-one thousand to a maximum of near fifty thousand in 2012. From 2013 to 2015, there was a drastic reduction in these numbers as the workers dismissed by extinction of the work post were just over fifteen thousand in 2015 (Cf. *Livro verde sobre as relações laborais 2016*, Gabinete de Estratégia e Planeamento do Ministério do Trabalho, Solidariedade e Segurança Social, Lisboa, 2016, page 293).

1. How are the causes that justify a redundancy or a dismissal due to business reasons defined?

The Portuguese legal system allows dismissals due to business reasons, which can be motivated by the closing of one or various sectors or equivalent structures of the company or a reduction of employees due to market, structural or technological reasons.

According to the definition of article 359(2) of the Labor Code: *(i)* market reasons are understood as a reduction of the enterprise's activity due to the foreseeable reduction of demand of goods or services or subsequent practical or legal impossibility of placing such goods or services on the market; *(ii)* structural reasons refer to an economic-financial unbalance, change of activity, restructuring of the organization or replacement of main products; *(iii)* technological reasons are related to a modification in manufacturing techniques or processes, automation of production instruments or of control or movement of cargo instruments, as well as computerization of services and automation of means of communication.

After the entry into force of the 2003 Labor Code, the existence of an imminent crisis or losses is no longer required for a collective redundancy. The motives may very well consist in a restructuring of the enterprise in order to increase the profits of the company even when it is already profitable.

When the employer uses the dismissal by extinction of the work post, some additional requirements related to the causes of the dismissal are defined in article 368 of the Labor Code: *i)* the motives cannot be due to the employee's or to the employers' fault; *ii)* the survival of the employment relationships must be practically impossible (see explanation in question 7); *iii)* and there can be no term contracts for the tasks corresponding to the position being extinguished. According to some legal literature, these requisites, as well as the selection criteria (explained in question 5), confirm that the legislator is more demanding in this case than in the collective dismissal. Nevertheless, other doctrine defends that these requirements are also applicable to collective redundancies, although the employer does not need to expressly address them in the written procedure.

The total and final closing of the undertaking determines the expiry (*caducidade*) of the employment contracts (article 346 of the Labor Code). Still, in order to fully implement Council Directive 98/59/EC of 20 July on the approximation of the laws of the Member States relating to collective redundancies (see European Court of Justice Case C-55/2002, Commission of the European Communities v. Portuguese Republic), the closing of the company must be preceded by the same procedure established for

collective redundancies (described in question 2) with the exception of the micro enterprises (as explained in question 9).

2. The business reasons that justifying the dismissal, must they concur in the entire company or only concur in the workplace where dismissal occurs?

In the Portuguese legal system, when the cause alleged by the company is an economic-financial unbalance, it is required to affect the entire company and not just the workplace where the dismissal will occur. On the contrary, if other causes are alleged, the rule is rather flexible, as these causes can affect only the workplace where the dismissal needs to be carried out.

3. What is the procedure that the company must follow to conduct a dismissal for business reasons? Are there specialties in such procedure in cases of redundancies (that is, when there is a collective dismissal)?

The Portuguese legal system allows the employer to conduct a dismissal for business reasons unilaterally. The procedure to follow varies depending on whether the dismissal is qualified as collective or not.

3.1. Collective redundancies

According to Directive 98/59/EC, when the dismissal is qualified as collective (as explained in question 4), the protection given to employees is of a procedural nature, although it may be questioned whether some aspects of the Directive are really met.

The employer who wishes to promote a collective redundancy must notify in writing the works council (article 360(1)). If there is no works council, the inter-union committee or the union committee representing the workers affected must be notified. In the absence of these employees' representatives, the employer must notify the employees in writing. The employees who may be affected can, within a period of five business days from the notification, elect a representative committee with a maximum of three to five workers depending on whether the redundancy affects up to five or more employees. In this case, all the negotiation procedure will take place with this ad hoc committee.

The employer's written notification of the intent to carry out a collective redundancy shall include information regarding: a) the reasons for the dismissal; b) the map of the company's personnel detailed and described by organizational sectors of the company; c) the criteria followed for the selection of the employees who are to be made redundant; d) the number and job classification of the employees affected; e) the period

for carrying out the dismissals; f) the method followed to estimate the compensation granted to the employees who are to be redundant. Nevertheless, it is not clear if this information must be sent to the employees themselves if they do not constitute an ad hoc committee.

The copy of the notification must also be sent to the governmental department responsible for labor issues (article 360(5)). Still, it must be stressed that the administrative intervention in this procedure is very modest: the labor authority will only participate in the negotiation "with the purpose of ensuring the regularity of the substantive and procedural aspects and promoting the conciliation of the parties' interests". In case some irregularity is identified, the labor authority can only refer warnings and recommendations to the employer and mention that in the negotiation records (article 362).

In the five days following the notification to the employee's representatives or to the ad hoc committee, an information and negotiation phase will take place with the purpose of obtaining an agreement as to the scale and effects of the measures being adopted and also regarding other measures that might reduce the number of employees being made redundant (article 361). It should be stressed that, in spite of its name, this is mostly a consultation process and normally there is no real negotiation, since frequently the employer's decision is already taken. Still, a number of alternative measures may be proposed such as suspension of the employment contract, reduction of the work periods, professional re-conversion and reclassification, early retirements or the anticipation of retirement. The proposed suspension of the employment contract or reduction of the work do not require the consent of the individual employees, unlike what happens with the other measures. The law foresees that both the employer and the worker's representatives may use the services of experts in the negotiation procedure. A record of the negotiation meetings must be made containing both the points of agreement as well as the conflicting positions of the parties, with the opinions, suggestions and proposals made by each one.

If there are no employees' representatives (which is the case in most Portuguese companies) and employees do not constitute an ad hoc committee to represent them within a period of five business days from the notification (which happens very frequently), the information and negotiation might not take place, according to the majority of Portuguese case-law and legal literature. In these cases, the employer can go straight to the communication of the final decision.

After the consultation period, having reached an agreement or in the absence of an agreement 15 days after the initial notification, the employer shall notify each of the

affected employees in writing with specific reference to the reasons and the date of the termination of the contract, the amount of severance payment, and the manner and the place of its payment (article 363). Consequently, in the absence of an agreement, the employer can communicate the final decision within a very short period since he/she has only to wait 15 days from the initial notification, which leaves – particularly if there is the need of an ad hoc committee – an extremely short period for the employees' representatives (and the employees themselves) to analyze the reasons presented and for the negotiation procedure itself.

On the same date on which the final decision is notified to the employees, the employer must send the record of the negotiation meetings to both the employees' representatives and the labor authority, together with a list containing the name of each employee, residence, date of birth and of admission in the company, social security situation, profession, job classification, salary, the individual measure applied, and the date for its implementation.

3.2. Non-collective redundancies (so-called dismissals by extinction of the work post)

A dismissal which is not considered collective is that kind of dismissal that, even though it can affect multiple employees, does not reach the threshold established in article 359 for collective redundancies (as explained in question 4).

In these situations, the procedure is similar to the one applicable in case of collective redundancies, although there are a few differences, as follows.

The employer shall notify in writing the works council (or, in the absence thereof, the inter-union committee or the union committee), the employee(s) affected by the dismissal and, in case they are union representatives, also the respective union, of the following elements (article 369): a) the need to eliminate the work post, identifying the motives and the section or equivalent unit to which it respects; b) the need to dismiss the employee(s) affected to the work post and their job qualification; and c) the criteria used for the selection of the employees affected by the dismissal (article 369).

In the 10 days following this notification, those entities (including the employee affected) can issue a grounded opinion stating their reasons to oppose the dismissal (article 370).

Finally, five days subsequent to the 10-day period previously mentioned, the employer can issue the grounded decision in writing, mentioning: a) the reasons for the extinction of the work post; b) confirmation of the requirements established in article 368(1); c)

proof of the priority criteria, in the event opposition regarding this aspect was raised; d) amount of severance payment, as well as the manner and place of payment; and e) date of termination of the contract (article 371).

This decision must be notified not only to the employee, but also to the employees' representatives and to the labor authority.

4. How is the number of affected workers calculated in order to determine the individual or collective nature of the dismissal?

The Portuguese definition of a collective dismissal is more comprehensive than the one established in Council Directive 98/59/EC, since it qualifies as a collective redundancy that which, simultaneously or over a three-month period, affects at least two or five employees, depending on whether it is a micro/small enterprise or a medium/large enterprise, respectively (article 359 of the Labor Code). For this purpose, article 100 of the Labor Code defines what shall be considered as a "micro" (with less than 10 employees), "small" (between 10 and 49 employees), "medium" (between 50 and 249 employees) and "large" (250 or more employees) enterprise.

Dismissal by extinction of the work post (article 367 of the Labor Code) shall take place only in cases where there is no room for collective redundancies as a result of the insufficient number of employees affected (article 368(1)(d)). For instance, in a company with 60 employees, if the employer decides to shut down a section with four employees, the collective dismissal is not applicable, but rather the dismissal by extinction of the work post.

Regarding the unit of measurement (company or establishment), article 359 specifically refers to the company, and article 16(2) of the Labor Procedure Code determines that when the collective redundancy includes employees from different establishments, the court of the place where the establishment with the largest number of dismissed employees is located shall be competent. Therefore, the previously mentioned thresholds have to be complied with within the company as a whole in order to determine the collective nature of the dismissal. Nevertheless, some legal literature considers that in the case of multinational companies, only the employees occupied in the Portuguese branch should be considered.

In this context, the decision of the European Court of Justice in the Rabal Cañas' Case (C-392/13) – declaring that taking exclusively the company as a reference was contrary to Directive 98/59/CE, which specifically refers to the establishment – has also had an

obvious impact in Portugal. Still, the problem has not been raised by Portuguese case-law until the present moment.

Regarding employment contract terminations, which have to be counted to determine the individual or collective nature of the dismissal, articles 359 and 367 of the Labor Code only consider dismissals due to business reasons. However, some case-law and certain legal literature include the situation of termination of the employment contract by mutual agreement when the motives that led to this agreement are identical to the ones that justify the dismissal due to business reasons (*v.g.*, Tribunal da Relação de Lisboa, 24.06.2009, proceeding 108/09.7TTFUN-A.L1-4). In this situation, the Pujante Rivera' jurisprudence of the European Court of Justice (Case C-422/14) had also no impact in the Portuguese regime for the time being.

In these circumstances, the compliance of the Portuguese regime of collective dismissal with European law is debatable. One disputable argument invoked by the legal literature that advocates such conformity regards the small number of employees necessary under Portuguese law to qualify the dismissal as collective (two or five, as explained above).

5. Are there groups of workers who have priority in a dismissal for business reasons? Particularly, do workers' representatives have priority? And pregnant workers? Elder workers? Workers with family responsibilities?

The Portuguese regulation on collective redundancies does not include criteria for the selection of employees to be made redundant, although they can be set by collective agreement. As a general rule, the employer can choose those criteria, which must be mentioned in the first notification to the workers' representatives (described in question 3), as long as they obviously respect the principle of equality and non-discrimination and other fundamental rights and freedoms.

Nonetheless, in the dismissal by extinction of the work post there are legally binding criteria (article 368(2) of the Labor Code) whenever several equivalent positions are to be eliminated, which must respect the following order: *i)* worst performance assessment (in accordance with parameters known in advance by the employee); *ii)* lower academic and professional qualifications; *iii)* higher cost of maintenance of employment for the company; *iv)* less experience on the job; *v)* less seniority in the company.

The Labor Code originally established other legally binding criteria: *i)* least seniority in the work position; *ii)* least seniority in the professional classification; *iii)* job classification of lower rank; and *iv)* least seniority in the company. However, the reform of the Labor Code operated by Law No. 23/2012 – which implemented most of the

labor market reforms imposed by the MoU – eliminated those criteria, stating that the employer could choose other ones, as long as they were relevant and non-discriminatory. Yet, the Constitutional Court ruled such amendment unconstitutional (decision 602/2013), because the new criteria were considered too vague and imprecise to permit an effective judicial control of the employer's choice, allowing arbitrary and judicially uncontrollable dismissals. Hence, there was a violation of the constitutional prohibition on dismissal without just cause (Article 53 of the Portuguese Constitution). As a consequence, Law 27/2014 amended article 368 of the Labor Code once more, defining a new order of criteria (mentioned in the above paragraph) which still remains in force.

Regarding protected workers, in Portuguese law no retention priority is given to workers' representatives (such protection existed in the previous Decree-Law 64-A/89 but disappeared in the 2003 Labor Code) or other groups of "disadvantaged" workers.

Nonetheless, there is some additional protection given to pregnant, puerperal and breast-feeding employees, as to any employee enjoying a parental leave (fathers as well) in any case of dismissal. Article 63 of the Labor Code requires an additional phase in the procedure which the company must follow to carry out a dismissal (including for business reasons): after the negotiation (collective redundancies) or the consultation (dismissals by extinction of the work post) of the employees' representatives, the employer must require the prior written opinion of the entity responsible for promoting equal opportunities among men and women (*Comissão para a Igualdade no Trabalho e no Emprego*). Regarding the *modus operandi*, the employer must send a copy of the termination procedure to this entity, whose opinion must be notified to both parties within 30 days. If this entity does not issue its opinion on time, it is considered favorable to the termination of the contract and the procedure follows its regular terms. If the opinion is unfavorable to the termination of the contract, the employer can only dismiss the employee if there is a court decision recognizing the existence of a justifying reason. The employer must put forward the lawsuit within 30 days after being notified of the written opinion. The dismissal is null and void if such opinion has not been requested (article 381(d) of the Labor Code).

6. Are workers affected by a dismissal due to business reasons entitled to an economic compensation?

In the Portuguese legal system, a dismissal due to business reasons declared fair – that is, according to the law – implies the recognition of the employees' right to a severance payment equivalent to 12 days of base salary and seniority payments per full year of service (articles 366 and 372). In cases of year fractions, the worker will be entitled to

the respective proportion. There are no minimum limits and an upper double cap is fixed by law: *i)* the value of the base salary and seniority payments cannot exceed 20 times the minimum monthly wage (EUR 580 since January 2018); and *ii)* the overall amount of severance payment cannot exceed 12 times the monthly base salary and seniority payments, with a limit of 240 times the value of the minimum monthly wage.

The same applies to the expiry of the contract in case of total and final closing of the undertaking, for which the assets of the company are liable (article 345(5)).

There are no peculiarities in relation to the amount of such severance payment that depend on the size of the company.

The present legal regime of severance payment was the result of the enactment of the measures prescribed by the MoU (see Introduction), which were implemented progressively. Before 2011, employees were entitled to a severance payment equal to one month of base salary and seniority payments per year of service or fraction, with a minimum of three months of salary and with no maximum cap. This severance payment was firstly reduced to 20 days of base salary and seniority payments per full year of seniority, the minimum limit was eliminated, and the maximum cap was introduced (Law No. 53/2011 and Law number 23/2012). The subsequent reform of the Labor Code, operated by Law No. 69/2013, further reduced severance payments to 12 days of base salary and seniority payments per full year of tenure. A complex transitional regime was established in order to safeguard acquired rights related to previous contractual periods.

If the worker accepts the severance payment, it is assumed that they accept the dismissal, making it very difficult for them to judicially challenge the dismissal. This is a very controversial solution, since it implicates a basic injustice which consists in forcing the employee who intends to challenge the dismissal to refuse something that they would always be entitled to, even if they did not win in court.

7. What are the obligations of a company that carries out a dismissal due to business reasons? In particular, is there an obligation to relocate affected workers within the company or the group of companies?

Workers affected by a collective dismissal or by an extinction of the work post have a number of rights besides the severance payment (explained in question 6), which are the same in both cases (articles 363-366 and 372 of the Labor Code):

a) The decision of dismissal must be notified in writing to each employee with a prior notice in relation to the anticipated date of termination of the contract which depends on the seniority of the employee concerned: 15 days for an employee with a seniority inferior to one year, 30 days if the seniority is equal or superior to one year but less than five years, 60 days for employees with a seniority equal to or greater than five years but inferior to 10 years, and 75 days for employees with a seniority equal to or greater than 10 years. Nevertheless, if a married couple (or one in a de facto relationship) is included in the collective dismissal, each member of the couple will be entitled to the prior notice immediately above the one that would apply to them if considered alone (article 363).

Yet, if the prior notice is either not given or only partially given, the collective dismissal is not unlawful: it simply happens that the employer will have to pay the salary corresponding to the prior notice period lacking (article 363(4)).

b) During the prior notice period, employees are entitled to a time credit of two days per week without reduction of salary, in order to look for a new job (article 364).

c) During this prior notice period, employees may also terminate the contract without losing their right to severance payment with a very short warning (three days in advance).

d) The dismissed employees are entitled to unemployment benefits.

Regarding the company's obligation to relocate workers affected by the dismissal, as stated above (see question 1), when the employer resorts to the dismissal by extinction of the work post, article 368(1)(b) requires that the survival of the employment relationships be practically impossible. Subsequently, article 368(4) explains that this happens as long as, after extinguishing the work position, the employer does not have another position to offer which is compatible with the employees' job classification. This means that, in order to pursue the dismissal, a vacant work position compatible with the job classification of the redundant worker must be unavailable in the company. The employer has to confirm this, but they do not have to create any new jobs nor is there any obligation of vocational (re)training.

This employers' duty to offer the employee an available and suitable position, whenever possible, as an alternative to the dismissal was removed in the 2012 reform of the Labor Code (Law number 23/2012), which implemented the MoU. Nevertheless, the Constitutional Court ruled such amendment unconstitutional (decision 602/2013), considering that there would be a disproportional restriction of the constitutional right to

job security. Subsequently, Law 27/2014 amended article 368, reinstating the employer's duty to propose an alternative work position whenever possible.

Some legal literature and case-law consider that such requirement must also be fulfilled in case of collective redundancy, despite the absence of identical legal norm. They invoke the Portuguese Constitution, which entails the *ultima ratio* principle in relation to dismissals. So, whenever there are work positions available that match the qualifications of the workers, dismissals should be always avoided.

8. What are the consequences that arise from breach or non-compliance with the legal procedure regarding dismissals due to business reasons? In which cases is the dismissal considered null (that is, that implies the worker´s readmission)?

Both dismissals for business reasons are considered unlawful whenever: a) the dismissal has not been preceded by the respective procedure; b) the dismissal is based on political, ideological, ethnic or religious reasons even when a different motive has been invoked; c) the grounds invoked to justify the dismissal are found non-existent or insufficient; d) the employee is pregnant, puerperal, breast-feeding or enjoying a parental leave and the prior written opinion of the entity responsible for promoting equal opportunities among men and women was not requested (article 381 of the Labor Code, which is applicable to all kinds of dismissals).

In addition, collective dismissal is also unlawful when the employer: a) has failed to perform the notifications and promote the negotiations; b) has failed to observe the 15-day dilatory deadline to decide the redundancy; c) has not made available to the employee, until the end of the notice period, the severance payment as well as the credits that have matured or become due as a result of the termination of the employment contract (article 383 of the Labor Code).

And dismissal by extinction of the work post is also unlawful when: a) the motives are due to the employee's or to the employers' fault; b) the survival of the employment relationships is not practically impossible (see explanation in question 7); c) there are term contracts for the tasks corresponding to the position being extinguished; d) the regime foreseen for collective redundancy is applicable; e) the criteria to select employees to dismiss are not respected; f) the employer has failed to notify the employees; g) has not made available to the employee, until the end of the notice period, the severance payment as well as the credits that have matured or become due as a result of the termination of the employment contract (article 384 of the Labor Code).

In all these cases, the employee will be entitled to two remedies: *i)* the reinstatement at the same workplace without prejudice to their job classification or seniority; *ii)* and an indemnity for all the damages caused by the dismissal (article 389 of the Labor Code). The choice of reinstatement belongs in any case to the employee, who can choose an indemnity instead. It will be for the court to establish the exact amount of this indemnity within a legal frame of 15 to 45 days of basic salary and seniority awards for each full year or fraction of service, with a minimum of three months of salary.

In cases of total and final closing of the company without following the collective redundancy procedure, there are further consequences, such as obligations to lodge financial guarantees, prohibition of practicing acts that can aggravate the company solvency, and annulment of some transactions (article 315 of the Labor Code).

9. Are there specialties in the dismissal due to business reasons for micro companies and/or small and medium enterprises?

In the Portuguese legal system, there are some specialties in the dismissal due to business reasons depending on the size of the company.

Firstly, there is an important particularity when the contract expires due to the closing of the company. In these cases, and as explained above (see question 1), as a rule, the employer must follow the same procedure established for collective redundancies. However, there is an exception for micro-companies (companies with less than 10 employees, according to article 100 of the Labor Code), which do not need to follow any procedure for the closing. They just have to give the employees the advance notice applicable in case of collective dismissal (article 346(4) of the Labor Code).

Secondly, the Labor Code allows the micro-employer to oppose the reinstatement of the employee if they show that such reinstatement would be highly detrimental and upsetting to the activity of the company (article 392 of the Labor Code). Still, the final decision concerning the reinstatement belongs to the court, which will evaluate the reasons presented by the employer. It must be stressed, however, that the faculty of opposition to the reinstatement does not exist if the dismissal is unlawful for being based on political, ideological, ethnic or religious reasons, even if a different motive was invoked, as well as in those cases where the court considers that the reason for opposing the reinstatement was created by faulty actions of the employer. If the employer successfully opposes reinstatement, the employee will be entitled to a higher indemnity fixed by the court between 30 and 60 days of basic salary and seniority payments for each full year of service or fraction of service, with a minimum of six months.

10. Is it possible to conduct a dismissal due to business reasons in a public administration? In this case, what specialties exist in regard to the definition of the business causes?

In the Portuguese legal system, it was possible to conduct a dismissal due to business reasons in a public administration body but only due to reorganization of services or rationalization of staff (articles 311-313 of Law 35/2014). However, this regime was recently revoked by Law 25/2017, of 30th May. Consequently, in the present moment, a dismissal due to business reasons is not possible in public administration.

11. Other relevant aspects regarding dismissals due to business reasons

The legal regulation of the termination of the employment contract is normally totally mandatory. According to article 339(1) of the Labor Code, the legal regime of the termination of the contract cannot be altered or excluded neither by a collective agreement nor by an employment contract, unless otherwise is established in the law itself.

Also, according to article 339(2), the criteria for determining the compensation to be paid, as well as the procedural deadlines and prior notice periods, may be altered by collective agreement. Therefore, they cannot be modified in the individual labor contract (article 3(5) of the Labor Code). Even the scope of modification by the collective agreement remains dubious in some cases, as article 339(3) states that "*the compensation values may be regulated by a collective labor regulation instrument within the limits established in this Code*".