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Employment & Labour - Austria

Supreme Court rules on social justification for dismissals

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Legal framework

Under Austrian law, employees are granted protection against a termination of employment that lacks social justification. This means that employees can challenge their termination before the courts if it results in detrimental consequences that exceed the usual negative effects of a termination.

If an employee can demonstrate that the consequences of the termination are material (ie, the termination has greater than usual detrimental consequences on the employee's situation), it is up to the defendant employer to show that the challenged termination is still justified on grounds attributable to the employee or for business-related causes. The court must then decide whether the termination is justified because the grounds for termination shown by the employer outweigh the detrimental consequences for the employee.

Case law

Based on this legal framework, an employee will not prevail if the employer can convince the courts that the period of unemployment following the termination and the prospects of the employee finding another job in a related area with similar pay do not deviate from the average. A court-appointed expert witness will testify on both the expected period of unemployment and the probability of the employee finding a similar job with similar pay within a certain timeframe.

In a recent decision, the Supreme Court summed up the previous case law on the issue and specified what amounts to 'unusual' consequences, in terms of a decrease in an employee's income following a termination and with regard to periods of unemployment.

The court concluded that periods of unemployment not exceeding 12 months are acceptable if the employee then gains full employment with comparable pay.

With respect to a reduction in an employee's income, the court ruled that a loss of income amounting to 30% might be unusual in lower income brackets, but that employees with higher salaries must accept such a decrease. According to the court, on average, only a loss of income exceeding 20% would constitute a severe impairment of the employee's interests that would afford him or her the right to challenge a termination as socially unjustified.

Comment

In essence, this means that employees must accept a decrease in their regular pay of up to 20% without possible recourse to the labour courts. Although this is good news for employers that are seeking to reduce their labour costs in times of an economic downturn or a decline in business, employees are faced with the possibility that employers can unilaterally cut their pay by up to 20% without a realistic chance of challenging such a move.

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