

Labour Regulation in the 21st Century:
In Search of Flexibility and Security

ADAPT LABOUR STUDIES BOOK-SERIES

International School of Higher Education in Labour and Industrial Relations

Series Editors

Tayo Fashoyin, University of Lagos (*Nigeria*)

Michele Tiraboschi, University of Modena and Reggio Emilia (*Italy*)

Guest Editors

Tomas Davulis, Vilnius University (*Lithuania*)

Daiva Petrylaitė, Vilnius University (*Lithuania*)

English Language Editor

Pietro Manzella, ADAPT Research Fellow

ADAPT (www.adapt.it) is a non-profit organisation founded in 2000 by Professor Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the **Marco Biagi Centre for International and Comparative Studies** (www.csmb.unimore.it), ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and the postgraduate programmes in the area of industrial and labour relations.

ADAPT International Scientific Committee

Bertagna Giuseppe (*University of Bergamo, Italy*), Bulgarelli Aviana (*ISFOL, Italy*), Fashoyin Tayo (*University of Lagos, Nigeria*), Frommberger Dietmar (*Universität Magdeburg, Germany*), Grisolia Julio Armando (*Universidad Nacional de Tres de Febrero, Argentina*), Hajdù József (*University of Szeged, Hungary*), Kai Chang (*Renmin University, China*), Ouchi Shynia (*University of Kobe, Japan*), Quinlan Michael (*University of New South Wales, Australia*), Raso Delgue Juan (*Universidad de la Republica, Uruguay*), Ryan Paul (*King's College, University of Cambridge, United Kingdom*), Sanchez Castaneda Alfredo (*Universidad Nacional Autonoma de Mexico, Mexico*), Sargeant Malcolm (*Middlesex University, United Kingdom*), Tiraboschi Michele (*University of Modena and Reggio Emilia, Italy*), Tucker Erick (*York University, Canada*).

Labour Regulation in the 21st Century:
In Search of Flexibility and Security

Edited by

Tomas Davulis and Daiva Petrylaitė

CAMBRIDGE
SCHOLARS

P U B L I S H I N G

Labour Regulation in the 21st Century:
In Search of Flexibility and Security,
Edited by Tomas Davulis and Daiva Petrylaitė

This book first published 2012

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Copyright © 2012 by Tomas Davulis and Daiva Petrylaitė and contributors

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner.

ISBN (10): 1-4438-3663-X, ISBN (13): 978-1-4438-3663-0

TABLE OF CONTENTS

List of Illustrations	ix
List of Tables	xi
In Search of Flexibility and Flexicurity	xiii
<i>Tomas Davulis and Daiva Petrylaitė</i>	
Chapter One: Looking for Flexibility and Security of the Labour Market	
Tackling the Economic Crisis: Labour Law in Lithuania	3
<i>Tomas Davulis and Daiva Petrylaitė</i>	
In Need of Flexicurity and Security in a Global Economy	17
<i>Roger Blanpain</i>	
Corporate Social Responsibility: A Concept for the 21 st Century	29
<i>Manfred Weiss</i>	
Flexibility and Security in the World Bank’s Doing Business Reports	49
<i>Yaraslau Kryvoi</i>	
Flexibility—Market Expectations and Labour Law Doctrine	63
<i>Arkadiusz Sobczyk</i>	
The Notion of a “Labour Market” and its Liberalisation in Poland	83
<i>Walerian Sanetra</i>	
Austrian Labour Law and Labour Relations as a Pattern of Flexicurity	93
<i>Robert Rebhahn</i>	
From Labour Market Crisis to Labour Market Reform: Lessons from and for a Divided European Union	117
<i>Marc De Vos</i>	

Legal Notions of Stability and Flexibility in Labour and Social Security at the Turn of the Century: A Fragile Juridical Effect. The Case of Telework.....	131
<i>Andrzej Marian Świątkowski and Marcin Wujczyk</i>	
Who is Allowed to Represent Employees? The Capacity of Trade Unions to Bargain Collectively in German Law.....	149
<i>Bernd Waas</i>	
Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security	163
<i>Michele Tiraboschi and Silvia Spattini</i>	
The Concept of Flexicurity in Estonian Labour Law	187
<i>Merle Muda</i>	
Flexicurity—Where does Flexibility of Labour Relations End and Social Security Begin? The Case of Estonia.....	207
<i>Gabriel Tavits</i>	
Flexibility and Security in the 21 st Century Labour Market: Current Trends in Latvia.....	217
<i>Kristīne Dupate</i>	
The Review of the EU Working Time Directive: Mediating Flexibility and Security. The Dialogue of the European Legislator, the ECJ and the Social Partners	225
<i>Ceciel Rayer</i>	
Some Considerations Concerning the Flexible Shaping of Working Time and its Limitations in the Light of Polish Statutory Regulations....	241
<i>Tatiana Wrocławska</i>	
Fixed-term Employment Contracts in Poland: In Search of Equilibrium between Flexibility and Protection	257
<i>Łukasz Pisarczyk</i>	

Chapter Two: Particularly Problematic Labour Law Issues

Termination of Employment Contracts in Poland	275
<i>Ludwik Florek</i>	
Ukrainan Legislation and the Regulation of Unfair Competition Prevention in Labour Relations	285
<i>Olena Rym</i>	
Transfer of Undertakings in Latvia.....	293
<i>Irena Kalnina</i>	

Chapter Three: Social Security Law

The Coordination of National Social Security Systems of EU Member States: EC Regulation No. 883/2004	309
<i>Andrzej Marian Świątkowski</i>	
Contributors	327
Index	329

LIST OF ILLUSTRATIONS

- Fig. 1-1. Michele Tiraboschi and Silvia Spattini. *GDP—Percentage Change on Previous Period*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.
- Fig. 1-2. Michele Tiraboschi and Silvia Spattini. *Unemployment Rate Change and Unemployment Rate 2010/07*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.
- Fig. 1-3. Michele Tiraboschi and Silvia Spattini. *Change in Employment Rate 2010Q2-2008Q2*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.
- Fig. 1-4. Michele Tiraboschi and Silvia Spattini. *Total LMP Expenditure 2008 and Unemployment Rate Growth 2009/07-2008/07*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.
- Fig. 1-5. Michele Tiraboschi and Silvia Spattini. *Total LMP expenditure 2008 and Unemployment Rate Growth 2010/07-2008/07*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.

LIST OF TABLES

- Table 1-1. Yaraslau Kryvoi. *Comparison of Selected Doing Business and the ILO Targets*. Flexibility and Security in the World Bank's Doing Business Reports.
- Table 1-2. Michele Tiraboschi and Silvia Spattini. *Measures Adopted by EU Member States*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.
- Table 1-3. Michele Tiraboschi and Silvia Spattini. *Comparison between New Welfare System and Flexicurity Model*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.
- Table 1-4. Michele Tiraboschi and Silvia Spattini. *OECD EPL Index*. Anti-crisis Labour Market Measures and their Effectiveness between Flexibility and Security.
- Table 1-5. Kristine Dupate. *Total Expenses for Social Security Purposes*. Flexicurity—Where does Flexibility of Labour Relations End and Social Security Begin? The Case of Estonia.

IN SEARCH OF FLEXIBILITY AND FLEXICURITY

TOMAS DAVULIS AND DAIVA PETRYLAITĖ

In modern society, labour relations are complicated and heterogeneous, as they reflect both the present state of the market economy and more general rules governing everyday life. Even the smallest social or economic changes may affect labour relations, which may inevitably give rise to antagonism, disagreement and conflict among the parties. Therefore, the increasing role of labour relations and that of the individual actors is characterised by new aspects determining contemporary social phenomena and processes, e.g. the definition of the social market economy.

Nowadays, the contemporary western world not only considers the relationships that take place within the market economy—which are based on the production and exchange of goods—but it also takes account of the adoption of certain principles—i.e. the freedom and initiative of economic activities and the right of private ownership—thus examining the social nature of such market relations.

At the end of the 21st century, new challenges for labour law have arisen. Increasing globalisation processes, the technological revolution, the establishment of new forms of employment, business relocation, and the nearly unlimited potential of the usage of information technologies in labour processes have resulted in a number of preconditions for the individualisation of labour relations.

Relevant issues resulting from the industrial revolution period and matters in terms of production have made room for technological innovation and new ways of handling relations in our consumer society. Therefore, today it is important to address not only the labour market relations and commitment of the state to ensure free economic activities, but also to deal with the social needs that require predetermined governmental measures to restrict free market relations, as a way of implementing shared objectives and values arising out of dialogue and cooperation of the social partners.

Besides free and independent, the relations within the market economy should also be socially motivated. The state has the opportunity—and the

duty—to limit the relations of the market economy so as to achieve certain social goals.

Both at a European and national level, striking the balance between security and flexibility of employment should be the core challenge of the labour market when developing relevant policy strategies. In considering the goal of the European Union to become the most competitive and dynamic knowledge economy in the world—capable of sustainable economic growth with more and better jobs and greater social cohesion—the mission of the Community should reflect the effort to strengthen both flexibility and security in the labour market. The commitment of EU employers and employees to adapt to the volatile labour market conditions leads to safeguard jobs. More specifically, this means to balance both flexibility and security to combine these two fundamental goals, with current theories on industrial relations and labour law that are called into question. While acknowledging the role of labour laws in protecting the rights and interests of employees, this function should be understood in a broader sense as a task to safeguard common interests, in order to benefit employers and employees, and all those individuals who have been forced out of the labour market.