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Name : ter Haar, Dr Dr

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- Track 1: Informal Employment: Impact, Challenges, Structures and Models
- Track 2: Social Security and Social Protection: Developing Discourses
- Track 3: Developments and Trends in Employment and Employment Relations Around the World, and the Impact of Globalisation
- Track 4: Labour Law and Regulation
- Track 5: Employment Relations in the Public Sector
- Track 6: The Migration Phenomenon: Strategies for the Protection of Migrant Workers

Abstract Title:

THE POWER OF EMPLOYEES IN A CHANGING WORLD OF INDUSTRIAL RELATIONS: MAY THE FORCE BE WITH THEM!

Authors and their Affiliations:

Chair
Teun Jaspers, prof. em. International and European labour law, University of Utrecht, The Netherlands

Participants
Manuel Antonio GarcÃa MuÃ±oz Alhambra, assistant-professor labour law and social security law, University of Castilla-La Mancha, Spain

Piotr Grzebyk, assistant-professor labour law and social policy, University f Warsaw, Poland

Beryl ter Haar, assistant-professor European and international labour law, University of Amsterdam, The Netherlands

Attila Kun, Associate Professor Labour Law, Head of Department Department of Labour Law and Social Security KÃ¡roli GÃ¡spÃ¡r University of the Reformed Church in Hungary, Budapest

Nikita Lyutov, Dr. Sc., head Labour and Social Security Law Chair at Kutafin Moscow State Law University, professor of Labour Law chair, National Research University â€œHigher School of Economyâ€ (Russia)

Abstract Content:

Abstract panel

The world of work is changing is several ways. Traditional, permanent full-time contracts are becoming less the standard, indeed they are increasingly replaced by new forms of work, including short-term contracts, home- or teleworkers, quasi self-employed persons, etc. Furthermore, the world of work is globalising with products being made up by components that have crossed dozens of borders, going where the labour costs for assembly are the lowest. These changes pose many challenges for the regulation of labour standards, in particular with respect of industrial relations. For instance, with the changing character of the workforce, the membership of trade unions is declining, raising questions about their representativeness and with that on their (unlimited) right to strike. At the same time, a new role has emerged for trade

unions on the transnational level, since there exists a regulatory gap regarding social rights which cannot be covered by national or international law.

This panel is concerned with two aspects of industrial relations in this changing scenery - the right to strike and compliance mechanisms and remedies in transnational company agreements. In other words, it aims to reconceptualise and explore the ways in which workers can enforce their rights in a changing world of work.

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Abstract Title:

THE RIGHT TO STRIKE: A RECONSIDERATION IN A NEW ERA OF INDUSTRIAL RELATIONS

Authors and their Affiliations:

Dr. Piotr Grzebyk Head of the School of Polish Law, assistant professor at the University of Warsaw â€“ Faculty of Law.

Abstract Content:

In the first paper by Piotr Grzebyk the right to strike will be reconceptualised. This will be done in general based on historical and social studies about the underlying justifications for the right to strike which have led to the international and national recognition thereof. Building on a wide variety of justifications, including strike as an “intrinsic corollary of freedom of association”, “equilibrium argument”, strike rooted in the dignity of the worker, human rights explanation of the right to strike, and the right to strike as a political reward for the role that labour organizations played in the struggle against authoritarian government, the legal sources of the right to strike are analysed. These sources are international (ILO Conventions, ICESCR, ESC, ECHR, EUCHR) as well as national (Polish Constitution). The latter is used by means of a case study in order to focus the analysis to the running process of moving form labour standards to human rights discourse which is accompanied by the idea of labour laws as fundamental rights. The paper concludes with an assessment whether the traditional labour law standard system or the human and fundamental rights discourse serves as a more effective justification and substantiation for the protection of the right to strike and the labour law movement.

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Abstract Title:

IS RUSSIAN LABOUR LAW COMPATIBLE WITH THE INTERNATIONAL LABOUR STANDARDS CONCERNING THE RIGHT TO STRIKE?

Authors and their Affiliations:

Nikita Lyutov, Dr. Sc., head Labour and Social Security Law Chair at Kutafin Moscow State Law University, professor of Labour Law chair, National Research University â€œHigher School of Economyâ€ (Russia)

Abstract Content:

The second paper by Nikita Lyutov has a more specific focus on the interpretation of the right to strike, namely the debates concerning the right to strike in the International Labour Conference Committee on Application of Standards that has started in 2012 and has not finished until now. Based on the recent literature on the matter and the author's own conclusions, a statement will be made that the ILO jurisprudence has effectively created an international custom concerning the right to strike. The limits to this right may only be drawn by proving the absence of opinio juris civenecessitatis on behalf of the state in question in respect of certain aspect of the right to strike. This means that unless the state shows that it didn't object to the ILO monitoring body's observations and direct requests, these must be treated as binding requirements to that state's national law and practice.

Building on this position, a discussion of Russian labour and practice concerning strikes will be proposed. Russian law and practice will be examined from the point of view of its compliance to the International Labour Organization and European Social Charter standards in the following issues:

- excessive limitation of categories of workers who have the right to strike;
- limitation of strikes in the essential services;
- excessive procedural requirements;
- limitations concerning the legitimate aims of strikes and others.

Some broader issues that are directly linked to the right to strike, including the collective bargaining limitations, weak information and consultation rights will also be examined in the light of the international labour standards on the matter. The paper concludes with the proposals on the harmonization of the Russian law on strikes with universal international labour standards (within the ILO framework) and at the regional level. Some speculations concerning the actual place of

the right to strike in the modern industrial relations will finalize the paper.

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Abstract Title:

EUROPEAN SECTORAL SOCIAL DIALOGUE IN MOTION. AN ANALYSIS OF THE CONTENT AND IMPACT OF THE AUTONOMOUS AGREEMENTS OF THE EUROPEAN SECTORAL SOCIAL DIALOGUE.

Authors and their Affiliations:

Manuel Antonio GarcÃa MuÃ±oz Alhambra, assistant-professor labour law and social security law, University of Castilla-La Mancha, Spain

Abstract Content:

The third paper moves to the second subject, agreements of social partners on the transnational level and more particularly the monitoring of the application and compliance thereof. In his paper Manuel Antonio GarcÃa MuÃ±oz Alhambra analysis one particular type of agreements, namely the so called 'autonomous agreements' that are a result of negotiations between social partners at European level. These agreements, which are European, are autonomous because it are not the institutions of the European Union or the Member States who are responsible for the implementation of these agreements, instead it are the social partners themselves. Because the legal status of these agreements is vague and their implementation is left up to the social partners themselves, there are many questions raised about their effectiveness in terms of ensuring the rights for the workers contained in these agreements. However, there is not much research about this. The aim of this paper is therefore to analyse the effectiveness of these agreements. Hence, it aims to go beyond the academic debate on the legal value of these instruments, analysing their content and application in practice. This analysis will enable to assess the impact they may have in the labour relations of those sectors where they are adopted.

In order to achieve this, five agreements are selected. The provisions concerned with the implementation of the agreements and the mechanisms to monitor this and the compliance with the agreements are analysed in order to establish what kind of mechanisms are created. Secondly, the paper analyses the application of the agreements in practice. The focus of this analysis lies with the way social partners are monitoring and controlling the implementation of these agreements. The analysis is based on information of social partners themselves and, where available, existing empirical case studies. The paper concludes with a discussion of the potential impact of these agreements, in order to improve our understanding of the dynamics, potentials, limitations and leval nature of these agreements.

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Abstract Title:

COMPLIANCE AND REMEDIES IN TRANSNATIONAL PRIVATE LABOUR REGULATION - A REAPPRAISAL

Authors and their Affiliations:

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Attila Kun, Associate Professor Labour Law, Head of Department Department of Labour Law and Social Security KÃ¡roli GÃ¡spÃ¡r University of the Reformed Church in Hungary, Budapest

Abstract Content:

The last paper by Beryl ter Haar and Attila Kun focuses on another form of transnational regulation, namely transnational private initiatives dealing with labour standards, such as corporate social responsibility codes of conducts and international framework agreements. Being voluntary forms of regulation they have casted doubts about their effectiveness. Therefore, many studies have been conducted to assess their effectiveness. The outcomes of these studies seem to confirm the doubts since they find little evidence of effectiveness. On the other hand, question marks could be placed with these studies since they often look for effectiveness in terms of traditional understandings of concepts of compliance and means to enforce compliance, among which remedies. This is problematic since these transnational private initiatives function differently from the more traditional forms of regulation that are based on command and control structures, like national labour laws often are.

The argument of this paper is that given the different nature and aim of these transnational private initiatives, a reappraisal of compliance and remedies is needed. More particularly, a reappraisal is needed, firstly, because the ‘obligations’ contained in such initiatives (if any) are often programmatic, declaratory, hortatory in their nature, instead of creating unconditional obligations that leave narrow margins of appreciation. This raises questions about what can be considered satisfactory compliant behaviour - when is behaviour compliant 'enough' when talking about obligations that require efforts rather than hard results? In this context it is also a question: what is to be remedied and for whom? Secondly, due to the voluntary nature of the transnational private labour law instruments, it is not surprisingly that traditional forms of remedy are rarely mentioned. Hence, our argument for a need of a reappraisal of the concept remedy which includes, among others, market and societal forces. The re-conceptualisation of the latter will be based on insights from several disciplines,

including the theory of indirect remedies, soft law, law and economics, institutional theory, corporate social responsibility and relates them to compliance. As for the concept of compliance, by way of analogy, the paper draws inspiration from the general international law and EU-law notion of ‘effective, proportionate and dissuasive remedies’. As such, the paper tries to bring together private ordering with innovative public regulatory strategies. The paper will conclude with emphasising the need for more attention to the novel features of compliance and remedial strategies which (might) fill in, at least to some extent, for unavailable direct remedies in transnational private initiatives dealing with labour standards.

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