

3. ZAAR-Kongress

The third congress by the “Zentrum für Arbeitsbeziehungen und Arbeitsrecht (ZAAR)” took place in the “Künstlerhaus” in Munich on 5th May 2006 and was titled: “External pressures to reform Labour Law in Europe – How do and will national jurisdictions react?” The congress was led by Professor Dr. Volker Rieble (ZAAR Director) and Professor Dr. Robert Rebhahn (University of Vienna).



After the opening speech by Professor Dr. Volker Rieble, Dr. Wolfgang Ochel, from the Institute for Economic Research presented to the various members of the congress the comparison of international labour markets (Benchmarking) and its validity. After an overview on the most important data sources for labour market institutions and the methods by which the ascertainment of internationally comparable data are grounded, Ochel was fairly critical about the present weaknesses of such methods which would minimise the extent to which such comparisons of labour markets are actually useful. He reminded the congress that the present approach, which is mainly based on statutes and regulations, should be extended to further provisions, that concepts and methods of measuring should be improved and particularly the relevance of certain statutes and the costs which arise due to the protection against unlawful dismissal, should be taken into account. In the following discussion his propositions received widespread approval among the members of the congress. The question whether labour law has a major impact on the labour market was answered by Ochel in a sense that labour law does indeed have a great relevance. In addition, Professor Abbo Junker pointed out, as a further important aspect to this evaluation, that the national labour jurisdictions are in different ways efficient.

Next, Professor Stein Evju from the University of Oslo presented the development of labour law from the view of the Scandinavian countries. Adding to the marks of the previous speaker, he stated that the OECD statistics on dismissal protection, which ranks Denmark higher than Norway and Sweden, does not mirror the actual situation in the different labour markets. Despite slight differences, the



employment statistics are fairly good in all Nordic countries, which is demonstrated by the high employment rate of over 80% and the low unemployment rate. A characteristic of the labour markets is firmly established labour relations, strong organisations with high numbers of members and an active role of the legislature on labour market policies, which is demonstrated in a more encouraged approach to bring people back to work. Even though labour law is partly under review, reforms or a liberalising development is not taking place. At most, a certain decentralisation in the area of negotiation with trade unions can be seen. The fundamental labour law structures, however, have not changed in the past years, and there has, in particular, been no decrease in labour protection.

In the following discussion Evju made it clear that a lawful dismissal due to company failure or rationalisation is regarded as “normal” and does not necessarily have to be avoided. Also, a dismissal does not produce extra costs as no redundancy payment has to be rewarded.



In the subsequent presentation, “The view of the Netherlands”, Professor Irene Asscher-Vonk from the University of Nijmegen focused on the changes of labour law within the Netherlands, beginning from 1999 onwards. Dutch labour law was especially criticised for harming economical development. As a reaction to that criticism, the law of “Flexibility and Security” was implemented, which took account of economic changes – the so called “Poldermodel”. Finally the jurisdiction changed too. While before 1999 the focus had been on the “good employer” with obligations to the employee, the jurisdiction changed and now has a greater emphasis on the “good employee” and his obligations to the employer. Concluding, Asscher-Vonk pointed out that the changes in labour law are not to be seen as an isolated process, but as a process to be seen in connection with changes in social law which will continue in future.

Dr. Douglas Brodie from the University of Edinburgh based his lecture “The view of the United Kingdom” on various cases, which is mainly due to the fact that UK law is based on common law, hence case law. He presented the step by step development and adaptation of the jurisdiction in accordance with economic changes. The jurisdiction on dismissal, which so far needed to have a sustainable reason to be effective, changed in terms of alteration dismissal in a sense that it will be effective as long as the offered working place is reasonable. The greater need for subcontracted workers was met by strengthened labour rights. Finally Brodie described the development of the fundamental principle of “mutual trust and confidence”, where the parties have to act – similar to § 242 BGB – with mutual trust and confidence. By recognising that work does not only lead to financial security but also to personal fulfilment, Brodie closed his presentation.





Dr. Petr Hurka from the University of Prague described in his presentation "The view of Eastern Europe" past development and the present situation of labour law – not only in the Czech Republic, but also in Poland, Hungary and Slovakia. For example, the Czech Republic had a codified labour law – which stated "everything that is not allowed, is prohibited". Not only the implementation of EU directives led to changes in the statutes: the Czech Republic is working on a new labour code, which will allow the use of rules of the new civil code – also in the process of been completed – and which will implement the constitutional principle: "everything that is not prohibited, is allowed". In addition it will give credit to the personal dependence of the employee and strengthen the freedom of contract.



Professor Dr. Rebhahn finally went on to terminate the congress with a speech on the development of the German speaking countries. Significant differences between the labour markets of Germany, Austria and Switzerland unveiled from a first basic overview over labour-force participation rates, rates of unemployment, economic structure and motivation of participation. Especially the diversity of the systems of social security was of special interest to the audience. After it appeared, that the frequency of regulation and the level of working-conditions control are substantially high in Germany, he progressed to the differences in dismissal protection and limitation. Professor Rebhahn deduced from the fact, that law suits of dismissal protection are a mass phenomenon in Germany, whereas they happen rarely in the other two countries, that a dismissal in Germany is not viewed as being compliant with the system. This is in addition to the heavy burden of processing above all due to the high standard of protection. Considering this, it seems to be inexplicable that a preclusion of operational dismissals is common practice in Germany, whereas it is not in Austria and Switzerland. Rebhahn concluded that countries that have labour-markets with flexible conditions and de-centralized instruments of regulation seem to handle the challenges of globalisation better.

In his closing words, Professor Rieble drew the audience's attention to the necessity for comparing international labour markets, but admitted on the other hand that one is only at the beginning of European labour market comparison, to which the third ZAAR congress has made his contribution.

A conference transcript with the speeches` in-detail-reproduction will be issued soon. The conference ended with a reference to the "Ludwigsburger Rechtsgespräche", which will take place on 9th November 2006 with the title "Family and Labour law".