Dietmar Hexel: 2012: 60 years of Employees' Representation Law- 2013: 60 years "Arbeit und Recht"

AuR 1/2013, p. 6

2012 the Employees' Representation Law turned 60 and this year, this very magazine is celebrating its 60th anniversary, just as the German Labor Court Law which came into force on 10/01/1953. The Federal Labor Court of Germany started working on 04/01/1954 in Kassel. The dates of these anniversaries are no coincidence but show the relation between legal workers representation and labor courts.

Wolfgang Däubler: redundancy due to business operations without consideration of interests?

AuR 1/2013 p. 9

Concerning dismissals on grounds of conduct, there must be a consideration of interest concerning on the one hand the employer's interest in terminating the labor contract and on the other hand the employee's interest in keeping his job. While doing so, all circumstances concerning this particular case, like the employer's damage and the employer's personal status, have to be considered. Dismissals on grounds of person are treated the same way. Redundancy due to business operations was treated just this way in the beginning. In the 1960s the BAG held the opinion that there had to be a "broad" consideration of interests concerning this type of dismissal. While doing so, the economic and other benefits of the employer had to be balanced with the employee's disadvantages. The Court changed its opinion at the end of the 1970s: the labor contract would only continue in very few cases (often for only a limited period of time). This would be the case "if the employee has to be protected in a special way because of his/her exceptional personal situation". In the more recent legal authority, consideration of interests is only considered in a formulistic way when investigating the prerequisites of a "social acceptable" redundancy due to business operations. Redundancies due to business operations not being challenged by reason of not considering the employee's interests enough can be seen voidable.

Roman Adam: the structure of reasons for termination in labor law

AuR 1/2013, p. 15

The trichotomy of reasons for termination in § 1 Abs. 2 S. 1 KSchG also serves the purpose of protecting the employee of losing his/her employment. This is ignored by legal authority if it considers the prerequisites for dismal on grounds of suspicion or the so called "free dismissal" to be given. In this case the reason for termination is assigned to one of the exhaustive unilateral reasons for termination in labor law in almost a violent way.. Termination on grounds of person as a reason for termination is not an omnibus clause because the broad use of this expression is contrary to the exhaustive list of § 1 Abs. 2 S. 1 KSchG.

Gerhard Reinecke: Vacation while notice period

AuR 1/2013, p. 19

The basic principle in vacation law of vacation as a paid leave of absence is contained in § 7 Abs. 4 BUrlG. Nevertheless, when determining the date of vacation, this principle has to be considered, too.

Therefore, wishes and needs of the employee contrary to this decision must be considered. The employer's decision to date the vacation in the notice period is not binding if not appropriate for the employee. When balancing, it may be crucial who terminated the contract: employer or employee.

Klaus Lörcher: the accession of the European Union to the European Charter of Human Rights

AuR 1/2013, p.23

The long lasting process of protecting basic rights in the European Union completed by the accession to the ECHR has reached a point where there is a (temporary) end in sight. When all hurdles to the accession are finally taken and the accession of the EU is complete, a number of problems will occur which have not been treated completely or thought of yet. Therefore there will be questions of interpretation as well. When interpreting, the effective protection of basic rights has to be priority. However, the accession is not sufficient to safeguard social basic rights in a final way. It will not be succeeded until the EU is going to access the Revised European Social Charta (1996) including all provisions and protocols (in particular the protocol concerning collective complaints, 1995).

Torsten Walter: Monti II has failed

AuR 1/2013, p. 27

The European Commission has been yellow carded for its proposal of a Monti-II regulation. Yellow carded? This is the nonofficial term for a certain stage in the European legislative procedure determined by the Lisbon Treaty.

Rüdiger Helm, Werner Mangold: Senior partners against discrimination on grounds of age- same share of remuneration in maturity

AuR 1/2013, p. 34

7 years after Mangold ./. Helm a new kind of discrimination on grounds of age is showing: the melt down of profitsharing concerning the group of "Golden Agers" (over 65 year old persons) in law firms. The successful legal action of Werner Mangold, which has been discussed a lot in Germany, gives reason to investigate the melt down of profitsharing concerning "Golden Agers" in law firms keeping in mind the explanation of the ECJ.