

HUMAN DIGNITY OF WORKERS AND COMPETITION

DIGNIDADE HUMANA DOS TRABALHADORES E COMPETIÇÃO CAPITALISTA

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Abstract: The capitalist economic system treats the worker as a commodity, an object, in contradiction to the idea of human dignity. However, there are mitigations to this trend: the qualification of the worker, the protection of labor laws, the role of collective bargaining, the unwritten rules of coexistence among enterprises, their workers and society itself. Nevertheless, the inherent market forces such as globalization, neoliberalism and generalized social and economic deregulation flaunt more strength. The counterpoint to this weakening process of Unions, collective bargaining and strikes involves the search for new and efficient practices by the Union movement, among which stand out the actions in virtual network (network), the mechanisms of sensitization and mobilization of public opinion and diversification of the legal action of the Unions.

Keywords: Work as a commodity. Classic mitigations to its decommodification. Contemporary reinvigoration of market forces. New ways to Union actions.

Resumo: O sistema econômico capitalista trata o trabalhador como uma mercadoria, um objeto, em contradição com a ideia de dignidade humana. Há, porém, atenuações a essa tendência: a qualificação do trabalhador; a proteção da legislação trabalhista; o papel da negociação coletiva; as regras não escritas de boa convivência entre empresas, seus trabalhadores e a própria sociedade. Ostentam mais vigor, contudo, as forças inerentes ao mercado, como a globalização, o neoliberalismo e a desregulamentação econômica e social generalizadas. O contraponto a esse processo de enfraquecimento dos sindicatos, da negociação coletiva e das greves passa pela busca de novas e eficientes práticas pelo movimento sindical, entre as quais se destacam as ações em rede virtual (*network*), os

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mecanismos de sensibilização e mobilização da opinião pública e a diversificação da atuação jurídica das entidades sindicais.

Palavras chave: Trabalho como mercadoria. Atenuações clássicas à sua mercantilização. Revigoração contemporâneo das forças de mercado. Novas formas de atuação do sindicalismo.

1. Point of departure: the worker treated as an object

In a market economy, labour is a commodity. The economic existence of the worker depends on the development of the markets. This is obvious for self-employed workers, but employees are in a comparable situation: if the employer gets into economic difficulties, the wage earner becomes redundant and can be dismissed. As an unemployed person, he can find a new job only under the conditions determined by the market. Despite the fact that the employee is a bearer of rights vis-à-vis the employer during the employment relationship, it is misleading to call him a “citizen” of the enterprise. An individual who can be “expatriated” at any moment is no “citizen” – and the employer can always take economic decisions that make the employee redundant. In reality, the worker is treated as an object. This is in contradiction to human dignity.²

2. Mitigating the situation

The fact of a person being a commodity can be more obvious or less obvious, more felt or less felt. Four factors play a role in this field.

2.1. The indispensable worker

It may happen that the worker cannot be replaced because of his special qualification or his experience in the enterprise. To dismiss such a worker would create considerable problems in the working process. There is a good chance that such workers will remain in the position they desire and that their dignity is respected, especially in cases of highly qualified

² See Däubler, Das Grundrecht auf Mitbestimmung, 4. Aufl., Frankfurt/Main 1976, p. 129 et seq.

persons. This is a market-created protection against dismissal. Protection against dismissal is not just one element of an employee's situation, it is the fundamental condition for the exercise of all other labour law rights.³

2.2. Protection by labour law

There are a lot of legal rules protecting the worker: health and safety, fundamental rights at the workplace, minimum wages, stability of real earnings, protection against dismissal. A big part of them is judge-made law whose occurrence varies from country to country. These legal rules reduce the level of being treated as a commodity. In some legal orders the employer is not allowed to examine the private life of an applicant and genetic screening is forbidden as well; the "commodity" must not be inspected in an "exaggerated" way.⁴ Labour law rules are important especially for those workers who are not protected by the market. This implies considerable problems of implementation: powerful and well-equipped authorities are required in order to correct the development of the market. The gap between law in the books and law in action is quite a big one in most countries. The tendency to a simple "law in the books" is especially visible in collective labour law, where the creation of institutions often depends on an initiative of the workers who elect a representative or become members of a trade union. In Germany, less than 50 % of the employees in the private sector is represented by a works council; only 58 % is protected by a collective agreement. The real conditions in this "shadow sector" of the economy where there is no collective labour law often escapes the notice of labour lawyers.⁵

2.3. Collective agreements

Even nowadays, there may be a collective counterforce defending or even increasing workers' rights. Rules in collective agreements are an important tool when it comes to the lives of workers. They improve the position of the worker by taking into account the concrete situation of an enterprise or a specific part of the economy like metal industry, textile industry

³ See Hanau, Verfassungsrechtlicher Kündigungsschutz, in: Hanau/Heither/Kühling (Hrsg.), Richterliches Arbeitsrecht. Festschrift für Thomas Dieterich, München 1999, S. 201 ff.

⁴ Cf. Auzero/Dockès, Droit du travail, 29th edition, Paris 2015, No 134 et seq (French law); Däubler, Gläserne Belegschaften? Das Handbuch zum Arbeitnehmerdatenschutz, 6. Aufl., Frankfurt/Main 2015, No 207 et seq. (German Law)

⁵ Empirical evidence as to France and Germany at Artus, Interessenhandel jenseits der Norm, Frankfurt/New York 2008, p. 187 et seq.

or public service. In this way, they are more flexible than the law created by public authorities.⁶ Unfortunately, this set of autonomous rules is now much less important in most European countries than it was 30 years ago, an obvious consequence of trade union weakness.

2.4. Informal rules

There are informal standards on “good behaviour” in many enterprises as well as in society. If they are disregarded, the workers and the public may protest against that. In some cases, protest of the workers will reduce productivity: for workers, the feeling of being treated in an unjust way is an obstacle to identify themselves with their tasks and to develop good and new ideas. Public critique, on the other hand, may damage the reputation of the enterprise. The management will be worried about losing customers – a “sanction” which can hurt the enterprise much more than a strike of two weeks of which the consequences will be overcome by overtime work within a month.⁷ The existence of these informal rules as well as the moral values and the social consciousness of the population differ from country to country.

3. Returning to the market forces

The four factors are of a quite precarious nature.

The mechanisms of the market do not always provide reliable protection. Although it is in the interest of an employer not to lose qualified and experienced workers, one can never exclude that some employers are going to damage their own interests with their actions. The protection disappears if the enterprise (or part of it) is closed for economic or other reasons. Highly qualified people will rapidly find a new job. People whose “value” depends on long experience in the plant will lose their “human capital” and will often find themselves in a comparable situation on the labour market as unqualified workers.

Neoliberalism reduces legal protection, especially in the field of employment stability, because it is considered to be an unnecessary obstacle to market freedom. Workers find themselves in a weaker position than before. Criticism on neoliberalism is considered a defence of outdated structures. In some countries like Britain the deregulation is possible by a

⁶ As to the inherent flexibility of labour law see Däubler, Die Flexibilität des Arbeitsrechts, in: Festschrift Dieterich (above N. 2) p. 63 et seq.

⁷ See Ray, Droit Social 2003, 591: „économie de la réputation“

majority decision of Parliament whereas in other countries an amendment of the constitution would be necessary.

Neoliberalism brings individualistic ideologies with it which even attract a lot of workers and their unions. The consequence is a reduction of union density in many countries and a decreasing importance of collective agreements. Once again, workers lose an important part of their protection.

Even informal rules will no longer function in the same way. Moral standards become less strict if the argument “this is a consequence of the market” has a high authority in public reasoning: if the free market is the best way of organizing the economy, one has to accept social disadvantages. Wide-spread criticism can be found in extreme cases only.

As a result of neoliberalism, the number of people whose dignity is in danger is increasing considerably. In some societies, the majority of workers may remain without effective protection.

4. Internationalization of the markets

Globalization is perhaps the most important economic basis for the success of the neoliberal ideology. Not only is there social competition but also what you may call social dumping. Countries with a low wage level and/or a favourable exchange rate of their currency can offer goods and some services at a very low price. Enterprises from industrialized countries invest in these countries and use the comparative advantage for their products. The first well-known example of this strategy is the textile industry during the 1970ies;⁸ other industries followed. In the high wage countries enterprises limit themselves to producing very sophisticated products. A new international division of labour appears.

The internationalized production is not confronted with international labour law rules. Although there are UN and ILO Conventions, they are normally not implemented in low-wage countries. Although there is a patchwork of national rules, those rules are mostly of no real importance in developing countries. Some enterprises have concluded framework agreements with international trade unions but their legal value seems doubtful. It is difficult

⁸ Cf. Fröbel/Heinrichs/Kreye, Die neue internationale Arbeitsteilung, Reinbek 1977

if not impossible to control their application and local subcontractors are usually not included in the conclusion of such agreements.⁹

In the EU, the freedom to deliver services implies the right of employers to send their workers to another Member State. If the average wage level “at home” is 10 % of the wage level in the country where the work is done, social dumping will automatically occur. The EC directive on posted workers¹⁰ offers a modest level of protection. Some fundamental rules like health protection and minimum wages apply, but there is no further adaptation to the social standards of the host country. In the construction sector collective agreements about minimum wages and annual leave apply; the Member States can include other parts of the economy too. The directive is interpreted by the European Court of Justice in such a way that other rules in collective agreements (e.g. about normal wages) do not apply. The Court considers the directive to have an exhausting character defining at the same time the highest possible wage level.¹¹ It is quite difficult to check whether minimum standards are observed in concrete cases since national authorities are not allowed to have a look at the workers’ bank accounts in their home countries. Contributions to the social security system are often quite low, because they are calculated on the basis of minimum wages and require a lower percentage than in the host country. The comparative cost advantage remains quite important. Labour standards in the host countries are therefore under pressure. This brings a short-term advantage to the less developed Member States, which they consider to be essential. But even at a medium-term perspective, it will prove to be a disadvantage: instead of developing the productivity of their own economies the countries of origin earn money by sending their most flexible workers abroad. No transfer of technology occurs. Although this was already a topic of discussion in the 1970s¹² societies do not always learn from the past.

5. Using information technology

Information technology, especially the Internet, facilitates the recourse to low-price services in developing countries. Growing importance is attached to the so-called crowd

⁹ Cf. Hepple, *Labour Laws and Global Trade*, Oxford and Portland 2005; Zimmer, *Soziale Mindeststandards und ihre Durchsetzungsmechanismen. Sicherung internationaler Mindeststandards durch Verhaltenskodizes?* Baden-Baden 2008

¹⁰ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, *Official Journal L 018*, 21/01/1997 P. 1 - 6

¹¹ ECJ 11.12.2007 – C-438/05 – Viking; ECJ 18.12.2007 – C-341/05 - Laval

¹² See Däubler, *Zur rechtlichen und sozialen Situation der Gastarbeiter in der BRD, Demokratie und Recht (DuR)* 1974 p. 3 - 35

working:¹³an enterprise in Europe or the US offers small tasks on the Internet which can be performed by workers all over the world. The prices are quite low because there are a lot of competitors from low-wage countries. Estimates show that in many cases the income amounts to approximately two US dollars an hour.¹⁴For more complicated tasks, there are two kinds of contracts. The first one is (relatively) fair: interested people can declare their willingness to do the “job” and mention the conditions; the best offer will be accepted. The second one is not so fair: everyone who is interested is invited to perform the task but only the best person will earn money. The other ones have worked for nothing and have even had to transfer all their copyrights to the enterprise.¹⁵Recently, there was a lawsuit in California dealing with the question whether the practice of crowd working contradicts the minimum wage act of California and the US Fair Labour Standards Act.¹⁶ Crowd workers only stand a chance of invoking labour law rules if the notion of “employee” is interpreted broadly.¹⁷ In this particular case, a settlement was reached which resulted in 65 % of the money going to the lawyers and only a modest pay increase for the crowd workers.¹⁸

6. Proposals to improve the situation

6.1. Better trade unions?

The decrease of union membership is not a universal trend. There are some exceptions like Sweden and Belgium which could serve as examples to other countries.¹⁹Why not use the “best practice” in this field? The obvious objection is that trade unions are embedded in a national tradition of industrial relations which cannot be transferred to other countries. If in one country the trade unions manage unemployment insurance - which can be quite important

¹³ Cf the contributions in: Benner (ed.), *Crowdwork – zurück in die Zukunft? Perspektiven digitaler Arbeit*, Frankfurt/Main 2014

¹⁴ Leimeister/Zogaj, *Neue Arbeitsorganisation durch Crowdsourcing*, Düsseldorf (Hans-Böckler-Stiftung) 2013 – www.boeckler.de/pdf/p_arbp_287.pdf

¹⁵ The question whether this is compatible with the German Civil Code is examined by Däubler, *Crowdworker – Schutz auch außerhalb des Arbeitsrechts?* In: Benner (ed.) – Note 12 - p. 243, 253 et seq.

¹⁶ *Otey, et al., v. Crowdflower*, United States District Court Northern District of California, Case No. 12-cv-05524-JST

¹⁷ For US law see Cherry, *Working for (virtually) Minimum Wage: Applying the Fair Labor Standards Act in Cyberspace*, *Alabama Law Review* 60 (2009) p. 1077 et seq.

¹⁸ <http://www.staffingindustry.com/Research-Publications/Daily-News>

¹⁹ Overview of membership in different European countries established by the European Trade Union Institute (ERUI): <http://de.worker-participation.eu/Nationale-Arbeitsbeziehungen/Quer-durch-Europa/Gewerkschaften>

when it comes to attracting new members – there is no realistic chance of implementing this model in a country where trade unions have already lost a big part of their influence.

Traditional trade unions often resemble an industrial plant with its hierarchic setting: there is a CEO and a board of directors at the top, there are department leaders and group leaders, and there are normal collaborators. Like in big enterprises, new ideas are not easily accepted: will they not create a lot of work? Will they perhaps have an adverse effect? Are they really compatible with the principles laid down in the general programme? Could their realization change the balance between different departments? There are so many questions with no clear answers. Would it not be reasonable to renounce such a hazardous game? The description refers to a couple of German experiences which hopefully cannot be generalized. Nevertheless, sociologists agree that the traditional structure is not adequate if you are looking for experience and innovation. Enterprises have changed a lot for the same reason, too.

In the U.S., there is a “National Day Laborer Organizing Network” with member organizations across the different states. The main centre of the network is located in California.²⁰ Some points seem to be of general interest. Day workers are organized in a “network”. There are so-called contact persons in different parts of the big towns. They inform members of the normal rate for a certain activity and which employers are good and which are bad. Bad employers will, of course, be avoided. If many people consult the “contact person” bad employers will have difficulties finding day workers at all. The union gives information that can lead to a kind of boycott. We can find the same principle in the movement of the “travelling journeymen” (“Gesellenbewegung” in German) which came into existence in Central Europe in the 13th century. Bad employers, i. e. (at that time) craftsmen, were formally “discredited”; no journeyman could conclude a contract with them without being discredited himself, too.²¹In a way, boycotts replace strikes and other forms of collective actions.

Can this form of organization gain importance in modern Europe? There are some advantages of a network in comparison with traditional organizations of the labour movement.

The people involved have a clear objective and a well-defined role. The information given to a member (or even to other persons) is obviously useful and can therefore justify a small monthly fee.

²⁰ <http://ndlon.org>

²¹ See Däubler, in: Däubler (ed.), *Arbeitskampfrecht*, 3. Aufl., Baden-Baden 2011 § 1 Rn 5 et seq (with further references)

Repression against a network is difficult. Meetings between two or three people cannot be controlled by the authorities, the contact can easily be declared to be of a private nature.

Ideological differences play no role. The fulfilment of the function does not depend on the political opinions of the people involved. The collaboration merely requires the conviction that the situation of day workers should be improved. It is not relevant whether this conviction comes from a Christian, socialist or communist point of view.

New ideas developed by a “contact person” may be realized at once. Each collaborator can try to fulfil his tasks in a better way – there is no hierarchy and therefore no person with more authority who needs to give his approval.

Is such a network not the only solution when it comes to organizing crowd workers?

The network solution is, however, not a universal one. The issue with a network is that there is a certain level of instability – the value of the information may be doubtful. If that is indeed the case, people will seek information elsewhere. However, there is one argument which is difficult to refute. A lot of lawyers who are on the side of workers are part of such networks: you will find one or several law firms of this kind in the big towns and they are usually in contact with comparable law firms in other towns. There are even networks all over Europe. It would be very difficult to bring these people together in the same political party, but collaboration in the interest of workers is possible. You will even find people who have kept their political position from the seventies and the eighties whereas trade unions have often given it up without replacing it by a new perspective.

6.2. Mobilizing public opinion

Schlecker, a German retail chain, has had a very specific reputation for years. For a long time, they had trouble with their works councils whose rights were often neglected. The press wrote about it and the majority of newspapers supported the works councils who were in the position of an underdog. Eventually, Schlecker fully recognized the legal situation and the discussion calmed down. However, the story continued. Schlecker had economic difficulties and restructured a lot of shops. A lot of small shops were merged into a single bigger one. Workers were dismissed. During the period of notice, they received a “kind offer” to come to a firm called “Meniar” which was an abbreviation for “bringing people into jobs” (“Menschen in Arbeit”). Meniar was a temporary employment agency and 100 % a branch of

Schlecker. Workers were offered new contracts with wages more than 35 % below the former level. Those who accepted were sent to a shop quite near the place where they had worked before; sometimes it was even the same shop. They had to perform the same kind of work as before, but for much lower wages.

Trade unions protested but were not able to organize a strike. Press and television gave critical reports. The majority of the population was on the side of the workers and some lawyers tried to prove that the way these workers were being treated was a circumvention of the law which guarantees acquired rights in cases of transfer of enterprises and plants. However, this was not decisive. The volume of sales went down and it seemed likely that this was a consequence of the public campaign. The owners decided to close down Meniar, their temporary employment agency, thus improving their reputation and winning back their customers.²² Workers were given their previous salaries again too.

This story illustrates some features which are never dealt with in labour law. Let us assume a union density of 80 % in the shops of Schlecker. The union would have decided to fight against the intended decrease of wages, demanding that Meniar goes out of business. Of course, Schlecker would have refused and the union would threaten the firm with a strike. What would be the consequence? Schlecker would take this to the labour tribunal to get an injunction against the trade union. The strike would be prohibited because of its illegal aim: to continue or not to continue a business is a so-called entrepreneurial decision which must not be an object of a collective agreement or a strike.²³ One could organize a strike for better working conditions at Meniar – but even then it is doubtful whether workers not affected by the measures would be able to participate in a kind of solidarity strike. All these legal obstacles do not exist if the press advocate the end of the temporary employment agency and if a number of consumers go to another firm. It becomes an advantage for the workers to leave the sphere of collective bargaining. Dear labour law colleagues – please bear this in mind!

What is possible in Germany may happen in China, too. On 1 January 2008, the new labour contract law came into force. One of its provisions contained the rule that after ten years of service with the same employer a fixed-term contract is automatically transformed into an open-ended contract. Huawei, an IT firm, had a lot of employees who fulfilled this condition. The enterprise “asked” them to cancel the employment contract in October or November 2007. In the beginning of January they would get a new fixed-term contract with

²² <http://www.zeit.de/wirtschaft/2010-01/schlecker-meniar-kuendigung>

²³ That is at least the prevailing opinion in Germany; see Däubler (note 20) § 13 Note 36 et seq.

the conditions they had before. Legally it was as doubtful as Schlecker's strategy, but it is difficult for a worker who wants to continue his employment to go to court. However, the press intervened: it seemed to be obvious that the new rule was circumvented. Huawei gave in and granted open-ended contracts to all workers concerned.²⁴

As in the Schlecker case, it would have been risky to use the route of labour law. It was quite unclear how the courts would have decided: if it was obvious that Huawei pressed workers to sign a cancellation contract, the court would probably have decided in favour of the workers. But what would have happened if the pressure could not be proven? The employer would merely have argued that the worker asked for unpaid leave. Why not? There is no necessity to use the suspension of the employment contract; an interruption of the contractual relationship is admissible, too.

How can the public opinion be able to get such results? The first thing you need is the personal commitment of some critical journalists and a political framework that allows such reports. Usually, a private owner of a newspaper will not oppose to such articles as long as the articles in question will be read and the newspaper will be quoted. The second requirement is that a lot of people share the social value that over-exploitation is unacceptable and immoral. That is still the case in Germany as well as in France or Spain; it is less likely however that this will be the case in the United States as well. In China, capitalist exploitation is still considered a transitional phenomenon; the big majority of people will accept critique on excesses. To share certain values is a much lower threshold than to engage in trade union activities or a strike. Even the boycotting of certain goods does not require a high degree of courage. Public pressure can therefore be organized much easier than traditional collective actions.

Most enterprises are quite sensitive as to their public reputation – another advantage for the workers. They never know if a newspaper article will have a negative impact on their volume of sales. The risk of losing customers seems to be much more important than the reduction of wage costs which is usually the reason for socially unacceptable measures. This sensitivity is very high in the case of retail firms which have a direct contact with the consumers, but it is less developed with heavy industry which sells its products to the state (weapons!) or exclusively to other enterprises.

However, critique on the behaviour of undertakings does not always deal with clear facts like in the Schlecker or the Huawei case. It may happen that the enterprise denies the

²⁴ <http://www.wiwo.de/unternehmen/huawei-umstrittener-chinesischer-export-seite-3/5469512-3.html>

accusation, affirming that everything is ok. The company may go to court in order to get an injunction giving it the right to publish a counterstatement. If the information comes from an employee he/she is confronted with the problems of a whistle blower whose position is quite ambiguous, balancing between betrayer and hero. The European Court of Human Rights has strengthened the position of such people by enabling them to invoke the freedom of opinion even in cases in which the facts cannot be proven. This fundamental right is restricted only if the facts are wrong and the whistle blower has acted with gross negligence.²⁵

What is true for the press and television is also true for the Internet. Whether a blog can replace a newspaper in a certain way and become a starting point of a campaign depends on the actual role of the Internet in the country in question. In the near future, it will be a decisive forum in terms of influencing the public opinion everywhere. The difference with the press and television, however, is the fact that the Internet has a more democratic character: one does no longer need critical “journalists”; a few critical bloggers can fulfil the same function. On Twitter and other social media, popular people can have many “followers” who automatically receive all their statements. The Chilean students’ leader Camila Vallejo, for instance, has 874.000 followers²⁶, which is equivalent to the power of a big newspaper. In a way, the Internet offers more possibilities to individuals than other media have ever done before. If a few people give a good and convincing evaluation of an event, that can be the starting point of a campaign against socially unacceptable behaviour of enterprises and managers.

6.3. Collective action on the Internet

More and more work is done via the Internet. One can use it to support collective actions in the “real world” and one can disturb the working process via the Internet.

As to the first alternative, I would like to mention the collective actions realized by workers and their friends against IBM Italy. Like in other countries, there is the Internet platform “Second life”. Each person can create a virtual human being (“avatar”) giving him certain good and certain bad qualities. In 2007, about 3000 people from more than 30 countries “played” the collective bargaining process at IBM Italy adding some important modifications to the reality: hundreds of pickets were present, big demonstrations took place and a meeting of the board of directors could not continue because many strikers entered the room. The decision-makers were highly impressed; could it not be possible for the actions in

²⁵ European Court of Human Rights 21.7.2011 – 28274/08 – NZA 2011, 1269 - Heinisch

²⁶ https://twitter.com/camila_vallejo

the game to become reality? The next day an agreement was signed in which IBM renounced all intended wage reductions.²⁷ This situation is similar to a public campaign: unlike in a strike, the individuals did not run any risk. For some of them, participation may even have been a funny thing bringing some new accents into the routine of everyday life.

IT technology can be disturbed as well. In 2002, there was a new form of collective action against the German Lufthansa. The company had collaborated with the government to return people to their home countries, people who had tried to get political asylum in Germany but were not successful in their attempt. It was clear that many of them would go to prison at arrival in their country, some of them would even be tortured or brought to death. A group of citizens protested against this practice. They developed the following slogan: “Three classes with Lufthansa - economy class, business class, deportation class”. The conflict escalated when a Nigerian citizen arrived dead in his country despite being accompanied by two German policemen. The group decided to block the Lufthansa booking system by sending so many e-mails that it would break down. They developed new software which sent three e-mails to the Lufthansa computer every second. The Lufthansa website was off-line for a couple of hours but the company then found a way around this problem by using other computers. One of the members of the group was prosecuted for duress but was acquitted by the Frankfurt court of appeal.²⁸

Other forms of protest are considered to be illegal sabotage. A computer scientist was dismissed and about to be replaced by a private firm. He installed a very sophisticated computer virus which blocked the whole system two days after he left his job. The new firm was quite helpless. As a second firm could not find the reason either, he was asked to come back as a “subcontractor” for a short time in order to repair the system. After some hours he succeeded in repairing the system but he installed a new virus which became effective two weeks later. So once again, he was asked to come back until his method was accidentally discovered.²⁹ Another computer scientist changed the main passwords of his employer before leaving so the firm was paralyzed for several days.³⁰ Another story concerns a system administrator: he modified the programmes in such a way that everything was deleted if the words “dismissed by the employer” would appear in his personal file.

²⁷ Cf. Berg/Kocher/ Platow/Schoof/Schumann, Tarifvertrags- und Arbeitskampfrecht, Kompaktkommentar, 4. Aufl., Frankfurt/Main 2013, AKR Rn. 224

²⁸ OLG Frankfurt/Main 22.5.2006 – 1 Sa 319/05 – CR (= Computer und Recht) 2006, 684

²⁹ See LAG (=Landesarbeitsgericht) Saarland 1. 12. 1993 – 3 Sa 154/92 – Beilage 7/1994 zu BB S. 14

³⁰ See the case Hessisches LAG 13.5.2002 – 13 Sa 1268/01 - RDV (=Recht der Datenverarbeitung) 2003, 148

7. Perspectives

The decline of trade unions and collective bargaining is not the end of defending workers' interests. Labour lawyers will perhaps be forced to look into other fields of law such as freedom of the press, consumers' activities and Internet communication. In the medium and long term this way of action could even be more efficient than traditional collective bargaining. Would it not be a good advice to give to employers: defend collective bargaining! You will be better off! This can (and should) be an object of further discussion.

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