

EUROPEAN LABOUR LAW

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European Labour Law

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PREFACE

Through time European labour law has acquired a significant place in both European law and national law systems. For persons working in a Member State other than where they live or where they worked before, or for service providers, it has a large impact. But it also has a large impact for the ‘immobile’ EU citizens, although this is less visible: e.g. in situations of discrimination on the basis of sex or age; in case of transfer of the enterprise in which they work, for their working time, and for health and safety.

European labour law is not always visible for those not familiar with it. This is due to the fact that considerable parts of this law have been implemented in national law. Yet, as national implementation law has to be interpreted in the light of the directive concerned, these EU instruments remain very relevant. Moreover, European labour law is influenced by other parts of European law and, for a good understanding of European labour law, the interaction between national and EU law needs thorough explanation. European labour law is also influenced by sources of international law, in particular principles derived from the instruments of the Council of Europe. We will discuss this in Chapter 1.

The Court of Justice has given specific attention to the development of some areas of social policy, in particular free movement of workers and equal treatment of men and women. In the latter case it transformed a provision from ‘a market making vehicle to a vehicle with market correcting potential’,¹ i.e. from a rule that was meant to prevent distortion of competition to a rule that was meant to improve the working and living conditions. ‘The social policy cases, with their direct impact on individuals, presented the Court with the opportunity to develop important principles, such as the direct effect of directives and even general principles of law.’²

However, the Court has met more criticism when it has had to balance the interests of national labour law and the principles of the single market.³ An example is the *Laval* judgment,⁴ and also some cases on collective redundancies, e.g. the *Alemo-Herron* case (see further Chapter 6).⁵ This history

¹ Barnard (2011), p. 662.

² Ibid., p. 662.

³ Ibid., p. 663.

⁴ ECJ 2007, C-341/05 (*Laval*).

⁵ ECJ 2013, C-426/11 (*Alemo Herron*).

of developing social policy, with its specific roles for Union legislature, Member States, Court of Justice and social partners is the story of this book.

European labour law has changed national labour law by increasing and improving the protection of workers, which differs from Member State to Member State, since it depends on the structure and contents of the domestic systems. It has had a significant impact on the position of workers, e.g. working time, health and safety, equal treatment on various grounds, including sex, sexual orientation, age, handicap, protection of social security rights of mobile persons and free movement of workers.

There are also tensions between European and national labour law, since it is a product of the interaction of several, sometimes contradicting interests. Freedom to exercise economic rights may limit the granting or exercising of social rights considerably. An example is the area of posting, where requiring service providers to pay cross-border posted workers equally to national workers was not required, since that would infringe the freedom of services too much. In line with this priority given to freedom of services, the Court of Justice also restricted the right to strike of trade unions to pursue equal wages for posted workers.

However, as said, European labour law is the result of the interaction of different views, interpretations, activities and interests, including those of the Member States, the EU Institutions and the social partners – and this means that it never remains static. Indeed, as we will see in Chapter 2, the views on the remuneration of posted workers have changed recently.

The objective of this book is to give a thorough insight in European labour law and its development, the tensions underlying it, and the impact on inter alia national labour legislation and case law of national courts.

In view of these different dimensions of European labour law, we felt that a cross-national approach was needed to do justice to them. For that reason, authors from different European countries were invited to contribute to this book by writing their own chapters, with an open eye for the various national perspectives including their own. This has the advantage that references to literature are not mainly to sources in one or more country, but show more diversity. We are aware that authors have to make a selection of national issues and sources, but we think that the present result shows more diversity than is often found in this type of handbook.

Involvement of so many authors, experts in their fields, inevitably goes with differences in approach and style. We think that this reflects the diversity of European labour law and might indeed be instructive for readers to get a grip on this dynamic field.

The book is structured as follows. After Chapter 1, in which an overview of the sources and instruments of European labour law is given, Chapter 2 goes on to look at on the free movement of workers and persons, an area that is within the exclusive competences of the EU legislature. It shows the interpretation

of this area by the Court of Justice, which has given full room for free movement, but it also shows the reactions of the Member States. The chapter also discusses the interaction with the freedom to provide services, showing the large impact of the internal market freedoms on European labour law.

Chapter 3 deals with an area of law that is relevant beyond cross-border situations: equal treatment law. EU law has been highly influential in this area and the Court of Justice has contributed substantively to this. We will see that there can be important differences in the interpretation of the EU provisions, depending on which equal treatment ground is concerned.

Chapter 4 is also not limited to cross-border situations; it concerns the impact on flexible working relationships. Although this area of European labour law could also be discussed as a form of discrimination, we have chosen to devote a separate chapter to this subject. After all, the European rules on flexible work involve more than equal treatment alone. Another distinctive feature is that most of these rules are created by agreements of social partners. Therefore, we consider it a specific area with its own dynamics.

Chapter 5, on collective bargaining, concerns the interaction of two main actors – i.e. trade unions and employers' organisations – and the specific rights each of these organisations have and how they make use of them. Insight into this interaction and into the framework and political reality in which this takes place, is of extreme importance for the development of European labour law. A major element of this chapter is the possibility to conclude agreement at the EU level; these may be of several types, including agreements that can be implemented by EU instruments.

The restructuring of enterprises is discussed in Chapter 6. Here we see the conflict of economic rights and interests on the one hand and social rights and interests on the other. This area has a large impact on national legislation of the Member States. Sometimes it might even be overlooked that these rules are of European origin. However, for the interpretation of these rules and the understanding of possible developments, insight into the original is essential.

The participation of employees' organisations in decision making in enterprises is the subject of Chapter 7. These rights can to some extent reconcile economic and social interests; as we will see this works out quite differently, depending on the national context.

Chapter 8 deals with health and safety and working time. Health and safety is already an 'old' area where the social action programmes of the European Commission of the 1970s have been elaborated in numerous instruments. The chapter shows how EU legislation takes account of differences between national legislations and leaves Member States to find their own solutions, thus letting enforcement remain an uncertain issue. It also shows that at the EU level there can be very serious discussions on whether EU legislation in these fields is possible and desirable.

The last chapter, Chapter 9, makes a crosscutting analysis of how the actors interact and may interact in the various fields, within the legal and political EU framework. Building on the preceding chapters, it considers the room for (different) choices and explores possible scenarios for further developments. In this chapter in particular, the overarching approach of this book comes to the fore: to fathom European labour law and its development as a dynamic product and process of the interaction of myriad interests of various actors.

The book is meant for readers who want to get acquainted with the major topics of European labour law, but also for those who want to gain a further insight in the area. For this purpose we are glad that we were able to involve so many eminent experts, from a large number of Member States, to describe the topic of their chapter, but also to give their views and to theorise on the topic, and mention very interesting sources for further reading. We also benefitted from their views on chapters other than their own.

Our aim was for a handbook comprehensively dealing with all important areas of labour law, written from several perspectives by experts, but within a restricted number of pages. We hope that we have succeeded in our objectives. Comments for further developing these are very welcome.

Teun Jaspers
Frans Pennings
Saskia Peters

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LIST OF ABBREVIATIONS

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| AG | Advocate General |
| ArbVG | Arbeitsverfassungsgesetz |
| BGB | Bürgerliches Gesetzbuch |
| CEACR | Committee of Experts on the Application of Conventions and Recommendations |
| CEEP | European Centre of Employers and Enterprises providing Public Services |
| CESCR | Covenant on Economic, Social and Cultural Rights |
| CFA | Committee for the Freedom of Association |
| CFREU | Charter of Fundamental Rights of the European Union |
| CJEU | Court of Justice of the European Union (also ‘ECJ’) |
| COM | Proposals and other acts adopted in the framework of a legislative procedure or communications, recommendations, reports, white papers, green papers |
| CRPD | Convention on the Rights of Persons with Disabilities |
| EC | European Community; Treaty of the EC |
| ECHA | European Chemicals Agency |
| ECHR | European Convention for the Protection of Human Rights and Fundamental Freedoms |
| ECJ | European Court of Justice (also ‘CJEU’) |
| ECSR | European Committee of Social Rights |
| ECtHR | European Court of Human Rights |
| EEA | European Economic Area |
| EEC | European Economic Community; Treaty of Rome |
| EESC | European Economic and Social Committee |
| EFTA | European Free Trade Association |
| ESC | European Social Charter |
| ETUC | European Trade Union Confederation |
| ETUI | European Trade Union Institute |
| EU | European Union |
| EWC | European Works Council |
| FNV | Federatie Nederlandse Vakbeweging (Dutch trade union) |

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| FRA | Fundamental Rights Agency |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labour Organization |
| NGO | Non-governmental organisation |
| OECD | Organisation for Economic Cooperation and Development |
| OJ | Official Journal |
| OMC | Open Method of Coordination |
| REACH | Regulation 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals |
| RESC | European Social Charter (Revised) |
| SCE | European Cooperative Society |
| SCOEL | Scientific Committee on Occupational Exposure Limits |
| SEC | Staff working documents of the EC prior to 2012 (now SWD) |
| SMEs | Small and Medium-sized Enterprises |
| SWD | Staff and joint staff working documents |
| TCA | Transnational Company Agreements |
| TEC | Treaty establishing the European Community |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| UEAPME | Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (European Association of Craft, Small and Medium-sized Enterprises) |
| UK | United Kingdom |
| UN | United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| US | United States of America |
| WHO | World Health Organization |

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