

### **Judges from the German Federal Labour Court Visited the Faculty of Law, Charles University, Prague, 28<sup>th</sup> and 29<sup>th</sup> November 2016**

On 28 and 29 November 2016 a group of young judges from the first instance labour courts visited the Faculty of Law, Charles University. The judges are seconded to work for two years at the Federal Labour Court in Erfurt. The group was led by Dr. Bettina Bubach. Their visit was arranged by Professor Wolfgang Hromadka, an emeritus Head of the Department of Civil Law and Labour Law at the University of Passau, who has served for a long time as a lay judge at the Federal Labour Court.

On Monday 28 November, the German lawyers were welcomed at the faculty and they were informed about the history thereof: in 1348 the faculty of law was one of the four founding faculties of Charles University. Subsequently the visitors were told about the present situation. They were interested especially in the Master's and doctoral programmes and the opportunities for students to study abroad. Every year, about 150 students participate in the Erasmus programme, and study at European and non-European universities. As regards Germany, the students mostly go to universities in Berlin, Bonn, Heidelberg, Hamburg, Munich, Dresden, Leipzig, Tübingen, Düsseldorf, Passau and Regensburg. The judges took a great interest in the information about the mock courtroom which serves for teaching purposes and for organising various events. The German colleagues then wished to learn more about the judicial system of the Czech Republic where labour judiciary does not constitute a separate strand. Nevertheless, the introduction of special labour courts or, at least, of specialised panels of judges, has been widely discussed in the Czech Republic. Individual employment disputes, i.e., the disputes between an employee and the employer over claims arising under employment relationships, are determined by the general courts. Yet the involvement of general courts in employment disputes seems rather unsatisfactory. The visitors were also interested in the career paths to be taken by graduates who wish to become judges, and the professional development of judicial trainees and young judges.

The German visitors showed a keen interest in the current issues in Czech labour law. We informed them about the draft amendment to the Labour Code which is currently going through the legislative process. The amendment is primarily designed to increase the flexibility of basic employment relationships, while strengthening the protection of employees. It responds to the practical developments on the ground, in particular the requirements of social partners, taking into account the development of the Czech legal system, and the Czech and EU case law.

Furthermore, the amendment addresses a fundamental issue in current labour law, namely work-life balance, which concerns all employees but in reality it affects mainly women. Achieving work-life balance is rather challenging for parents, especially if they have young children. Women experience many difficulties when returning to work after maternity or parental leave. A possible solution could lie in atypical or flexible working arrangements, such as part-time work and work outside the workplace.

Part-time work (the so-called shorter working hours) is defined as work carried out over a shorter period of time than the usual weekly working hours, i.e. less than 40 hours per week. Under the Labour Code, pregnant employees, the employees caring for a child under 15 years, and other specific categories of employees are entitled to work part-time or to benefit from other appropriate working arrangements different from the usual working hours. The employee must make a formal request, and the employer is required to comply with it unless there are serious operational reasons for non-compliance. It is a right which can be, in the case of non-compliance by the employer, asserted in a competent court.

In the Czech Republic, the ratio of part-timers to the total number of vacancies is still significantly lower than in the traditional EU member states. Unlike these states, the part-timers in the Czech Republic are primarily mothers of young children. Many employers are reluctant to employ part-timers, using the serious operational reasons as justification. According to the applicable case law, in order to assess the seriousness of operational reasons, it is necessary to determine the level of disruption

caused to the employer's operations by part-time work compared to full-time work. A serious operational reason is justified only in situations where the regular business operations – the fulfilment of tasks or activities of the employer – would be precluded, impaired, or seriously endangered. Although the *serious operational reasons* have been defined by the courts, they still pose problems in practice.

Under the draft amendment to the Labour Code, the employer will be required to inform the employee in writing of the serious operational reasons which prevent the employer from complying with the request for part-time work or another appropriate working arrangement.

While the Labour Code currently does not prohibit work outside the employer's workplace, it does not specifically provide for it. The Code merely indicates that work may be carried out at the employer's workplace or elsewhere, as agreed. The employment agreement may stipulate a number of places of work. Likewise, the Labour Code does not prevent the employee from working at the employer's workplace on certain days, and at home or at another agreed place on other days. Nevertheless, detailed rules for homeworking and teleworking are missing. The amendment is designed to detail the conditions for work outside the employer's workplace, and in particular to take account of the Framework Agreement on Telework concluded by the social partners on the European level in Brussels in July 2002.

The German colleagues were deeply interested in all the information presented to them. They indicated that work-life balance is a very topical issue in Germany too, although part-time employment does not seem to pose any difficulties.

The introductory speech was delivered by Věra Štangová, an associate professor, who also moderated the debate. Other attendees from the Faculty of Law included professor Tröster, Dr. Horáková and Dr. Martin Paus, a DAAD lecturer. The debate was conducted in German.

We offered information materials about the faculty to the visitors, as well as materials in English about the professional development of judicial trainees and young judges from the Judicial Academy of the Ministry of Justice, provided by its Director, Mr. Glotzmann.

On Tuesday 29 November the German colleagues wished to visit Karolinum, the seat of the Rector's Office of Charles University. They saw the Great Hall and had the opportunity to watch a graduation ceremony from the organ area. Then they visited the ceremonial halls of Karolinum where numerous academic and social events take place. Finally they went to the museum of Karolinum.

The German colleagues were deeply interested in the history of Charles University. They were impressed by the solemn conferment of degrees, a historical ceremony dating back to the 18th century, because, as they admitted with regret, most German graduates receive their diplomas by post.

The organisation of the visit was ensured by Věra Štangová, and facilitated by Milena Horáková and David Kohout.

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