

The Transfer of Undertakings: Striking a Balance between Individual Workers' Rights and Business Needs

Giuseppe Santoro-Passarelli

Abstract: This paper examines the implementation of the directives on the transfer of undertakings, in whole or in part, with particular regard to the impact of individual workers' rights of legislative provisions in Italy, the UK, Germany and France. A further consideration is that of information and consultation rights of workers in the event of a transfer, and EU provisions in the case of insolvency. Reference is made to a number of landmark rulings of the European Court of Justice, and it is argued that in this matter there is a considerable degree of convergence between the various national systems.

Some Problems and Themes in the Application in Member States of Directive 2001/23/EC on Transfer of Undertakings

John McMullen

Abstract: In this article we examine some key areas giving rise to controversy in the application of EU Directive 2001/23/EC on the approximation of the laws of Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (the "Acquired Rights Directive"). In examining the case law and legislation of Member States we focus particularly on the case law and legislation of the United Kingdom and the Republic of Ireland, but case law and legislation of other EU Member States is referred to and compared where appropriate. We conclude that there are some common themes in the case law and legislation of the Member States on the Acquired Rights Directive. But we draw attention particularly to the legislation of the United Kingdom in the TUPE Regulations 2006, through which the UK has taken a bold step concerning the treatment of workers' rights in relation to outsourcing from which, we suggest, lessons can be learned. We also argue the time is ripe for consideration whether share sale acquisitions should continue to be excluded from the Directive. The Acquired Rights Directive will shortly be reviewed by the European Commission and it is timely to review the practical application in Member States of the Acquired Rights Directive in their domestic case law and legislation.

Mergers and Amalgamations in India: Protecting Labour in Times of Change

Meghna Rajadhyaksha

Abstract: This article studies the law protecting workers during the merger or amalgamation of a company in India. It discusses the provisions of company law and labour law that operate in the area, with a discussion of case law on the point. The author finds that in light of the constitutional provisions in India, that favour protection of labour interests, the law is indeed inadequate and recommends the reform of corporate and labour legislation to provide for consultation requirements, participation of the workers and protection of their interests on transfer to the amalgamated company.

Temporary Agency Work in Germany and Australia: Contrasting Regulatory Regimes and Policy Challenges

Lars Miltacher, John Burgess

Abstract: A common development among OECD and EU countries is the increase of temporary agency work in the last decade despite different regulatory regimes. For the researcher, agency work is an interesting topic as it is part of the romance of flexible working patterns, the new economy and a new type of employment arrangements; but is also part of a process that undermines employment conditions, collectivism and workers' rights. Using Germany as an example of a country with a highly regulated temp industry and Australia as a country with very little regulation in this area, the paper outlines the growth and extent of agency employment in each country and examines the regulatory regime that applies in each country. The regulation of temporary agency work in Germany and Australia will be contrasted with the proposed legislation by the European Directive on temporary agency work in order to develop new proposals for an advanced supra-national regulatory approach on temporary agency work.

“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws”.

Exploring the Spectrum of Labour/ Management Participation Within Safety Regimes: Occupational Health and Safety in Ontario (Canada), Sweden and the United States

Jason Lakhan

Abstract: Increasingly, workers are demanding greater input into working conditions. Nowhere in the management/ labour dynamic is this more evident than in the area of occupational health and safety, but standards vary significantly across the globe. The occupational health and safety regimes in Ontario, Canada, Sweden and the United States have been born out of radically different national, political and labour landscapes. This paper aims to describe how these competing visions have manifested themselves within their respective work environments and their effect upon the labour/management relationship. A unique feature of this paper is the utilisation of the author's personal professional experience within the occupational health and safety enforcement mechanism in Ontario, Canada. The personal anecdotal information informs the discussion of the competing enforcement mechanisms being employed in the comparator jurisdictions. Other areas of comparison include the varying degrees of responsibilities of workplace stakeholders, non-disciplinary mechanisms in the use and effects of organised labour upon the regimes. The unique external influence of European Union initiatives on Sweden's regime is also discussed. Ultimately, the work is a discussion of workplace power dynamics within three very different safety regimes and was written with an eye to stimulating discussion in the ongoing dialogue on workplace safety.

Military Unions and the Right to Collective Bargaining: Insights from the South African Experience

Lindy Heinecken and Michelle Nel

Abstract: With the convergence of civilian and military employment practices, the debate on whether ‘soldiers’ may be granted labour rights is highly controversial. In Europe, Euromil has made it their mission to have the right of freedom of association to join trade unions extended to military personnel. In South Africa, the Constitutional Court granted military personnel this right, as well as the right to collective bargaining (it appeared). As has been the case elsewhere, this has not been embraced by military leadership, who prefer to manage employee relations from a classically unitarist perspective. This article highlights why armed forces have such an issue with trade unions and collective bargaining. Specific reference is made to the unique South African experience and the various court cases over the right to collective bargaining. To place the level of discontent among soldiers in perspective, reference is made to some empirical findings of South African officers and to recent international examples. In the final section, the debate is placed in context and some lessons from the South African case are reflected upon.