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UNIVERSITY OF AMSTERDAM

Erasmus+ Jean Monnet Action

European Labour Law Perspectives - Enhancing the Social Pillar

Project Reference: 587919-EPP-1-2017-1-NL-EPPJMO-PROJECT

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Within the Jean Monnet action EUSOCP, the Labour Law Departments at the University of Amsterdam and the University Carlos III-Madrid are issuing a monthly newsletter summarizing the development of the EU Pillar of Social Rights and including comments on EU legislation and case law in the field of Labour and Social Security Law. The newsletter is available via the following links:

- <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/european-labour-law-perspectives.html>

The European Pillar of Social Rights is divided into three main categories in the field of employment and social policies. Each of these categories contains a number of policy domains, to which different principles are attached. The three categories are:

- Equal opportunities and access to the labour market;

- Fair working conditions (adequate and reliable balance of rights and obligations between workers and employers);
- And adequate and sustainable social protection.

For a further description of the pillar see:

EN: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

NL: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_nl

ES: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_es

European Pillar of Social Rights

Public consultation: reviewing the European disability strategy 2010-2020

July 31, 2019

On July 2019 the Commission has launched a 12-week open public consultation on the implementation of the European disability strategy 2010-2020. The European disability strategy 2010-2020 is the EU's main policy document in the field of disability and it sets out objectives and actions for implementing disability policy at EU level. The European Commission is carrying out an evaluation to assess how the strategy was implemented during the period 2010-2020. The information collected will be used to assess what has been achieved in the field of disability during the 2010-2020 period and it will help the Commission to draw lessons on how to re-shape disability policy in the future, making it more effective and focused

Read on:

<https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9435&furtherNews=yes>

New rules on better work-life balance for parents and carers in the EU

July 12, 2019

The new Directive (EU) 2019/1158 on work-life balance for parents and carers has been published in the Official Journal of 12 July 2019. The Work-life Balance Directive introduces a set of legal measures aiming to modernise the existing EU legal and policy frameworks on parental leave and work-life balance. The main aims of the Directive are: promoting a better work-life balance for parents and carers, encouraging a more equal sharing of parental leave between men and women, and addressing women's underrepresentation in the labour market. The Directive on work-life balance for parents and carers aims to increase the participation of women in the labour market and the take-up of family-related leave and flexible working arrangements. The new act also provides opportunities for workers to be granted leave to care for relatives who need support. The legislation means that parents and carers will be better able to reconcile their professional and private lives, and companies will benefit from more motivated workers.

Read on: <https://www.europeansources.info/record/proposal-for-a-directive-on-work-life-balance-for-parents-and-carers/>

ETUC demands EU Ombudsperson for European works councils

July 1, 2019

The European Trade Union Confederation (ETUC) founded in 1973, held its 14th congress in Vienna in May 2019. The head organization has currently 90 national affiliated confederations in 38 countries with around 45 million members. The congress adopted an action programme up to 2023, organized in 13 initiatives. The key components are the reinforcement of the European social model through collective bargaining, a binding social dialogue and a reform of EU law with respect to democracy in the workplace. As part of the action plan, for the first time the ETUC is demanding the appointment of an Ombudsperson for cross-border employee involvement, hence for European works councils, for participation in the European Company (SE) and for codetermination on supervisory boards. The Ombudsperson is to act as a voluntary mediator and should not exclude any court action. In the past many European works councils have been prevented from legally enforcing their rights due to legal uncertainty and the lack of funding. Furthermore, the ETUC is demanding tougher sanctions for infringement of EWC law.

Read on: <https://www.etuc.org/sites/default/files/publication/file/2019-06/CES-14e%20Congre%E2%95%A0%C3%87s-Manifesto%20EN.pdf>

New EU Directive for cross-border conversions

July 1, 2019

New rules for cross-border conversions, mergers and divisions of companies were adopted on 18 April 2019. The European Parliament passed the "Company Law Package" which is a previously negotiated compromise on EU company law. At the beginning of this legislative initiative, the proposals made by the European Commission had triggered protests from the trade unions. In principle, following the transfer of a company's seat to a country where codetermination does not exist, any existing supervisory board employee participation is to be permanently eliminated after four years. An abuse procedure aims to ensure that the company conversion is not used to prejudice the rights of employees, to avoid social insurance contributions or tax liabilities or for criminal purposes.

Read on: https://ec.europa.eu/info/publications/company-law-package_en

European Reports/Studies

Digitalization and employee involvement in restructuring

August 25, 2019

The effects of digitalization on labour relations are examined in the Diresoc project which is carried out by research institutes in eight countries and sponsored by the EU. The goal of the project which is coordinated by the University of Liège, is to promote innovative practice for socially responsible restructuring. It focusses on four industries; tourism, banking and insurance, postal services and logistics as well as the processing industry. Several countries have already been examined in more detail and European works councils have been invited to take part in an on-line questionnaire.

Read on: <http://diresoc.eu/index.php/outcomes-results/wp1-literary-review-and-experts-interviews/>

Review on Employment and Social Developments in Europe: tackling climate change can be a driver for growth and jobs

July 4, 2019

On July 2019 the Commission published the 2019 edition of its yearly *Employment and Social Developments in Europe* (ESDE) review. In light of global long-term trends such as ageing, globalisation, technological transformation and climate change, the 2019 ESDE is dedicated to the theme of sustainability. The report shows that tackling climate change and preserving growth go hand in hand. It sets out a number of policy options that are able to preserve the EU's competitiveness, sustain growth and spread its benefits to the entire EU population and future generations, while pursuing an ambitious transition to a climate-neutral economy. The 2019 review also confirms the continued expansion of the EU's economic activity, with new record levels in employment and an improving social situation.

Read on: https://ec.europa.eu/commission/presscorner/detail/en/ip_19_3412

Tackling social disruption in the online platform economy

July 1, 2019

The FEPS published a Policy paper in which it makes the case that regulation of the activities of online platforms is necessary at EU level. Especially the precarious position of their workers needs to be regulated. Much online platform work is vulnerable and the current regulatory responses at national level have so far been insufficient to protect online platform workers. The paper concludes that it is important to shift the narrative away from 'harmful rules' that 'hamper' technological 'innovation' and instead to argue for a socially sustainable technologically supported economy that benefits everyone involved.

Read on: <https://www.feps-europe.eu/attachments/publications/feps%20paper%20-%20garben%20-%20clean%20final.pdf>

Joint report on the future demographics of the EU

June 25, 2019

The Joint Research Centre and the International Institute for Applied Systems Analysis has launched a joint report on the future demographics of the EU. By looking at factors such as migration, education levels and labour force participation, the report moves beyond traditional demographic analysis to provide a set of scenarios which reveal how these factors can shape the EU's future population and labour market.

Read on: <https://ec.europa.eu/jrc/en/news/who-will-live-and-work-eu-2060>

EU Case Law

Framework agreement on fixed-term work, equal treatment, remuneration, seniority

June 20, 2019

Judgment of the Court of Justice in Case C-72/18, Ustariz Aróstegui

Facts

In this case, the Court of Justice assessed the preliminary question referred by the national Court (Administrative Court of Pamplona, Navarra, Spain) about the compliance of the

regional law in the Spanish region of Navarra with the system of remuneration of professors in fixed-term contracts.

Mr Daniel Ustariz Aróstegui was hired in 2007 by the Departamento de Educación del Gobierno de Navarra (Department of Education of the Government of Navarre, Spain; ‘the Department’) as a professor under a fixed-term public law contract. Since then, he has been working in several educational centres. In 2016, Mr Ustariz Aróstegui asked the Department to grant him the additional remuneration for grade enjoyed by civil servant professors with the same seniority as him. His request having been rejected, he brought an action before the Juzgado Contencioso-Administrativo de Pamplona No.1. (Administrative Court, Pamplona, Spain). The Pamplona Court notes that the legal regime currently in force in Navarre lays down, as the only objective condition for the payment of the additional remuneration for grade, a seniority of six years and seven months in the grade immediately below, the advancement of grade thus occurring automatically as time passes. It also specifies that the national rules, since they perceive the grade as a mechanism for professional development specific to officials, consider that the additional remuneration for grade is a personal remuneration inherent in the status of official, which would thus constitute a subjective condition for its granting. The framework agreement on fixed-term work concluded on 18 March 1999 (‘the framework agreement’), annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, (‘the framework agreement’) prohibits the treatment, with regard to conditions of employment, of fixed-term workers in a less favourable way than permanent workers in a comparable situation, solely on the ground that they work for a fixed period, unless different treatment is justified on objective grounds. As the Pamplona Court is uncertain whether the nature and purpose of the additional remuneration for grade may constitute an objective reason justifying the less favourable treatment accorded to contract agents under public law, it decided to refer the following question to the Court of Justice:

"Should clause 4 of the [framework agreement] be interpreted as meaning that it precludes a regional legislation, such as that [at issue] in the main proceedings, which expressly excludes the recognition and payment of additional compensation for the personnel of the Navarre public administrations falling under the category of “contractual agents under public law” - whose contract is for a fixed term - on the grounds that said supplement constitutes remuneration for the advancement and progression of a professional development scheme applying specifically and exclusively to staff in the “civil servant” category - whose employment is open-ended? "

Considerations of the European Court of Justice

In this judgment, the Court considers that the framework agreement precludes the granting, by national legislation, of additional remuneration to teachers employed as statutory civil servants, excluding teachers employed as fixed-term contract agents under public law, if the only condition for granting that supplement is the completion of a certain period of service. According to the Court, the granting of the additional remuneration for grade must be considered as an ‘employment condition’ for the purpose of the framework agreement, since the only objective condition for receiving that grant is the completion of a period of six years and seven months of service.

The Court then examines whether the statutory officials and contract agents under public law in question are in a comparable situation. While stressing that it is for the Pamplona Court, which alone has jurisdiction to assess the facts, to determine whether this is the case, the Court of Justice notes that there is no difference between the functions, services and professional obligations performed by a civil servant professor and those performed by a professor who is a contract agent under public law. It must therefore be held in principle that the situation of a fixed-term worker such as Mr Ustariz Aróstegui is comparable to that of an indefinite worker

1. https://arcamm.uc3m.es/arcamm_3/item/show/5fd5d75416103ff3185db4aab0b7c357
 2. https://arcamm.uc3m.es/arcamm_3/item/show/a7262a469e9bff226605a8bc26a9b6b0
 3. https://arcamm.uc3m.es/arcamm_3/item/show/ea080356e304ed054ce60a231b0d7006
 4. https://arcamm.uc3m.es/arcamm_3/item/show/fb3050d315154d8ffe923d28d8107e18
 5. https://arcamm.uc3m.es/arcamm_3/item/show/6220166b54f76e83283bdfd1985bdc04
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- **The summer Course: *European Labour Law Perspectives – Enhancing the Social Pillar***, was held on 20-22 June 2018 at the Law Faculty - University of Amsterdam, the Netherlands. Venue: Nieuwe Achtergracht 166, 1018 WV, Amsterdam.

This course aimed at keeping employment specialists and labour law practitioners up -to -date by providing an overview of the latest policy developments, legislative initiatives and case law in the field of EU labour law.

Key topics discussed

The European Pillar of Social Rights

Workers protection in insolvency proceedings

Labour law and the on-demand economy

EU social security law

Update on the revision of the Posting of Workers legislation

Temporary agency work and flexible employment

Working time Directive

Workers involvement in the undertaking

EU Antidiscrimination Law and protection of atypical workers (fixed-term contracts, part-time workers), discrimination on grounds of gender, religion and age at work, etc.

Other recent legislative and policy developments at EU level: work -life balance and proposal on a Directive on transparent and predictable working conditions.

This conference was aimed at academics, lawyers specialised in employment and labour law, and other legal practitioners.

Keynote speakers

Prof. dr. Catherine Barnard

Prof. dr. Anthony Kerr

Prof. dr. Frank Hendrickx

Prof. dr. Manfred Weiss

Prof. dr. Jaap van Slooten

Prof. dr. Evert Verhulp

Prof. dr. Mies Westerveld

Prof. dr. Auke van Hoek

The recordings of the presentations at this Jean Monet Summer School are available at the following link: <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/multimedia/multimedia.html>

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