Rolf Birk, Die multinationalen Korporationen im internationalen Arbeitsrecht, in: Internationalrechtliche Probleme multinationaler Korporationen, Berichte DGVR Heft 18, Karlsruhe 1978

Summary

International Law Problems of Multinational Corporations
Multinational Corporations in International Labour Law

by Professor Dr. *Rolf Birk,* Augsburg

A. Social-economic and legal issues of the international labour law concerning Multinational Corporations

1. In their external relations Multinational Corporations (MNC) exert considerable influence on the local and national labour market. The internal structure of several MNCs is especially characterized by their personnel. Tensions in industrial relations are moreover the result of activity of MNC in developing countries.

2. At the moment labour law can get hold of a MNC only through the legal ,,nationalization" of these economic international unity.

3. Hence, main problem consists in the delimitation of several national labour law systems which may differ to a considerable extent. This difference, however, may cause difficulties to extend and to enforce the labour law system governing at the seat of the parent company to all members of the group.

B. International individual labour law in the framework of the MNC

4. Not all matters of labour law are determined by the same law governing comprehensively a MNC. Whether the corporate veil of the subsidiary company may be liftet in certain occassions must be determined by the law governing the individual event. The reference of the individual labour contract to the group of

companies is reflected in the affiliation with this group which has relevance for many matters of labour law.

5. This affiliation with the MNC is brought about by the conclusion of the labour contract either with the parent company or with the subsidiary company. In both cases a personnel management company can act as intermediate agent; this company may conclude the labour contract also in its own name and lend the employee to another company of the group.

6. The international mobility of some categories of employees (for example managerial clerks) within the group of companies is highlighted by foreign employment (delegation, transfer). This employment ist legally characterized by the fact that the employee is at the disposal of another employer with whom he was not yet in contractual relations.

7. Only two of the many problems of individual labour law shall be touched here: The risk of wages in the case of a frontier crossing labour dispute and the problems of the dismissal.

a) If there is a strike in a foreign company of the group then the domestic employee becoming unemployed by this strike may claim wages unless the foreign strike has any consequences for his total contractual situation in the group.

b) The employees protections against dismissal is not governed by the parties' choice of the applicable law. The employer's duty to find another job in his enterprise for the protected employee is extended over the total MNC in the case that it is imposed on the parent company. Redundancy payments are calculated on the basis of the time of employment in the whole group of companies.

C. International collective labour law in the framework of the MNC

8. Up to now the frontier crossing collective agreement for a group of companies has had no practical importance. On the one hand this situation is due to the habits and pressures of the national wage policy of the trade unions and of the employers' associa-

tions, on the other hand the situation is due to the legal difficulties of the national labour law concerning collective agreements.

9. There are two ways to get a uniform regulation by collective agreement for a group of companies:

a) The parent company concludes a collective agreement in its own name which binds also the subsidiary companies.

b) Each company of the group concludes a separate but identical collective agreement in content with the respective national trade unions.

10. The applicability of a single legal system to a legally homogeneous collective agreement for a group of companies is possible if the parties to the collective agreement can choose the determining law.

11. It is impossible to eliminate completely the national legal systems of collective agreements because the party autonomy of employers and trade unions to regulate the industrial relations in the most legal systems is based on constitutional foundations and is therefore strictly binding.

12. At present the conclusion of a collective agreement for a group of companies with the parent company is to be recommended only when it binds the parties of agreement and not the employees of the several companies. The parent company has to assume the duty in the collective agreement to exercise its influence by its corporate power on the subsidiary companies that they will perform the collective agreement.

13. The MNC as an association of enterprises has itself no capacity to conclude a collective agreement. Therefore the parent company or the separate companies of the group can be parties to a collective agreement. International associations of trade unions are not trade unions themselves. They have no capacity to conclude a collective agreement unless the national legal systems are modified. For this reason every national legal system determines whether and to what extent a national trade union is capable to conclude a collective agreement.

14. In the case of a frontier crossing strike concerning a MNC two cases have to be distinguished:

a) If the strikers are favoured by the agreement in dispute, it makes no difference from the German point of view in which

country of the MNC the strike takes place. It is no question of a sympathy strike.

b) Inside the MNC the question of a sympathy strike arises only if the employees of another subsidiary company are striking in favour of the employees of another subsidiary company.

The strike itself is governed by the legal system at the place of work.

15. The law at the place of work also governs if nonstrikers in a company of the group refuse to perform some work which should performed for another company of the group affected by a strike. From the German point of view this refusal of work by nonstrikers in favour of foreign employees of the group does not violate the neutrality of the subsidiary company which is in danger by its membership of the group.

16. The boycott by employees working outside the group as a general measure of support is determined by the law at the place where the boycott is proclaimed as well as by the law at the place of performance.

17. The general works councils of the German subsidiary companies of a foreign MNC can establish a group works council for the German part of the group.

The group works council established at the German seat of a MNC may also include foreign works councils if they approximately meet the German standard with respect to their establishment and legal competence.

18. MNCs with their management in a foreign country are not regulated by § 76 subsection 4 BetrVG 1952: The employees of the domestic subsidiary company(ies) cannot vote for the supervisory board of the foreign parent company.

19. § 5 subsection 3 MitbG 1976 applies to the German group of companies being part of a foreign MNC.

20. The employees of the foreign subsidiary companies of a German MNC are entitled under §§ 5 subsection 1, 1 subsection 1 MitbG 1976 to elect the representatives of the employees for the supervisory board of the German parent company.