Abstracts

Formation Process of the EU Labour Law Policy

Keiichiro Hamaguchi (The Japan Institute for Labour Policy and Training)

In the EU's labour legislation system, corporatism in the form of involvement and initiative of the social partners is provided in the treaty (constitutional law) and it is regarded as an alternative democracy. From enforcement of Maastricht Treaty, six collective agreements have been concluded between intersectoral social partners: while three of them have been enforced in the legal form of directive, other three are "voluntary agreements". At the same time, important areas such as anti-discrimination legislation have been deleted from this legislation system. Recently, Danish "flexicurity" model has become the focal point of the debate in labour law. Paradoxically, however, nordic corporatist system, which is the social foundation of the "flexicurity", has been attacked by the principle of market integration. To tackle this problem, the establishment of industrial relations at the EU level is needed.

EU Labour Law and Labour Legislation in Great Britain

Kenji Arita (Senshu University)

Labour legislation in Great Britain has developed under the influence of the labour laws of the European Community (EC) and European Union (EU) that acted as a driving force. However, it has not developed in a straight line. Instead, its development can be divided into three stages, namely: Period(1)covering the 1960s and 1970s, Period(2)under the Conservative Party starting in 1979, and Period(3)under the Labour Party called "New Labour" starting in 1997. The development history of labour legislation varied in each period. In Period(1), EC labour law was legislated as domestic law in Great Britain, developed through adjustments between EC labour law and the established tradition of collective laissez-faire of British labour law, suggesting that British labour law would change. In Period(2), EC and EU labour law was legislated as domestic law to improve legislation such as the prohibition of discrimination and job equality to counter the de-regulation and de-rigidification promoted by the Conservative Party. In Period(3), EU labour law was legislated as domestic law to streamline the legislation of issues such as the regulation of working hours, equal treatment of atypical employment, and information provision and consultation procedures through efforts to adjust EU labour law to the tradition of collective laissez-faire and basic policy of securing a flexible labour market. EU labour law is expected to keep developing, however the British approach to developing labour legislation by promoting the legislation of EU labour law as domestic law by placing trust in the function of the labour market besides promoting adjustments as mentioned above will probably remain unchanged. Indeed, differences in labour legislation between Great Britain and countries of the European Continent will not be eliminated easily, even if EU labour law and legislation of EU member states that develop in step with EU labour law progress in closer collabouration.

Flexicurity and Equality in the Dutch Labour Law

Kanta Owada (Shiga University)

I have described two acts as the symbolical institution of the labour reform in the Netherlands. The Act on Flexibility and Security of 1 January 1999 and the Act on Adjustment of the Working Hours of 1 July 2000 are the expression of the most imporatnt and original systems in the Netherlands. These acts represent two

principles of the flexicurity and the equality which have brought national legislation in line with international standards, including the implementation of the EU directives and have reflected the tendencies in EU. On the other hand, the Dutch system has in the first place introduced these fundamental notions, particularly the flexicurity into the legal framework.

The Impact of EU Directives on Italian Labour Law: Security and Flexibility

Maurizio Del Conte (Bocconi University)

In the last two decades, the Italian Labour Law has been deeply influenced by the European Social Policy. The article analyzes the different fields of the Italian Labour Law in which the combined action of EU directives and the European Court of Justice have played a fundamental role in changing the National Legal System: from the collective dismissals' discipline to the transfer of undertakings; the workers' protection in case of employer's bankruptcy and the reform of the labour market's players; the new flexy-time regulation and the temporary work agencies. The Author stresses the fact that, in the last few years, the European Social Policy has significantly turned its path: overpassing the traditional mission of improving the working conditions, the new European categorical imperative seems to be the so called "*flexicurity*", which means, on the one hand, an easier way to dismissal combined with a high degree of flexibility in managing the working conditions, and on the other hand the safeguard of the worker's income, provided by the welfare state, in the case of involuntary unemployment. This new trend of the EU Social Policy deeply impacted on the Italian Labour Law — particularly under the legislative action of the center-right Italian Administrations of this new century — making it possible a new age of reform aimed at the so called "liberalization" of the labour market. Nevertheless, the transition to a full implemented "flexicurity" system is still far to be reached in Italy, as well as in most of the European Countries. Therefore, the crucial question is: why? The thesis of the author is that the failure — so far — of the European track to the flexicurity is due to social and cultural reasons, rather than to the difficulty in finding the adequate economic coverage. The old saying that "the job is not commodity" is still well present in the European culture and the idea that an "unemployment benefit" is the equivalent of a job is generally rejected. In fact, one of the fundamental pillars of the Italian and Euro-continental Labour Law is the severe regulation of the dismissal. This means — in the opinion of the Author — that the Legal System assigns to the employer a role of watchdog of the employment stability. So — it's the article's conclusion — the trade-off job security/unemployment benefit is still refused in the widespread European public opinion, and this cultural and social common mood will continue to influence the European Social Policy for a long time to come.

A Challenge to the Swedish Model? Implementation of the EC Directive and Labor Law in Sweden

Michiyo Morozumi (Meiji Gakuin University)

There are five points to the argument on this subject. (1)Sweden has developed its own original model of labor law which is centered on a collective agreement system based on highly-organized cooperative labor-management relations. However, Sweden had to accept a different legal system, the European Community (EC) Law, when it became a member of the European Union (EU) in 1995. (2)When Sweden joined the

EU, the government made much effort to ensure the possibility to implementing EC Directives in the field of labor law through collective agreement. (3)Generally speaking, Sweden has implemented the EC Directive correctly after joining the EU. One exception is the implementation of the Working Time directive, because it needed to modify the mechanism of the quasi-mandatory law that generously allows for deviation from the legislation through collective agreements. (4)In addition, though the implementation of the EC Directive is progressing in the field of anti-discrimination, it is criticized that individual employees are not entitiled to effective remedy under the Swedish dispute settlement system which is closely related to the collective agreement system. (5)Recently , ECJ showed in the Laval case that the right of industrial action based on Swedish law should be limited to ensure the free movement of services within the internal market. It requires Sweden to make fundamental modifications to its collective agreement system, which means that the relationship between Swedish labor law and EC law has entered a new phase.

Influence of EC's Directives and Case Law on the French Labour Law

Kaoko Okuda (Kyoto Prefectural University)

This article examines the influence of the EC's Directives and Case law upon the French labour law. After presenting the general remarks on this problem, we took two issues as objects of study : Non-discrimination and Fixed-term Contracts. Concretely, we examine the French national law for transposition of EC's directives (concerning the notion of direct and indirect discrimintation, sexual and moral harassment as a type of discrimination) and the impact of the Court of Justice on the interpretation given by Cour de cassasion (Supreme Court).

The Influence of EU Directives on German Labor Law and the Present Situation

Satoshi Nakauchi (Kumamoto University)

This paper considers the influence of EU directives concerning labor since the mid-1970s on German labor law, especially in the fields of the equal employment opportunity, dismissal, and atypical employment. The legislation in German have been led by EU directives with regard to equal employment opportunity, so it might appear that EU directives have had a big influence on German labor law. However, they have not necessarily brought new values to it, because the principle of equal treatment has been already accepted, to a certain extent, in German case-law. In the fields of dismissal and atypical employment, EU directives have mostly followed the statutes and case-law in Germany. Therefore, it could be pointed out that EU directives have not strongly influenced German labor law, but rather it has contributed to the enactment of them in these fields. This implies that German labor law is not only unilaterally affected by EU directives, but also gives hints to them.

Recent Labour Law Changes in Spain

Gen Oishi (Hokkaido University)

This article focuses on the new legislation in Spain. The first topic is the establishment of a new Gender Equality Act in 2007, which is intended to promote equal treatment for women. The new legislation gives women a number of new employment rights. Fathers will also benefit under the Act: they will now be entitled to take 13 days' paternity leave. The second topic is the reform of the Labour Market in 2006, which seeks to improve growth and employment. One of the main objectives

of the reform is to limit the repeated renewal of employment contracts within the same company by obliging companies to offer a permanent contract to any worker. For that purpose, the Government provided a fixed yearly subsidy (with a maximum duration of three years) for temporary contracts that are converted into permanent contracts.