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***The Federal Labour Court of the Federal Republic of Germany
– System and Procedural Issues***

***Federalny Sąd Pracy Republiki Federalnej Niemiec
– zagadnienia ustrojowe i proceduralne***

SUMMARY

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The subject of this dissertation is the analysis of the legal regulations concerning the system of and proceedings before the Federal Labour Court of the Federal Republic of Germany (*Bundesarbeitsgericht*). It is one of the five highest federal courts, together with the Federal Court of Justice, the Federal Administrative Court, the Federal Social Court, the Federal Fiscal Court, which are listed in Article 95(1) of the Constitution of the Federal Republic of Germany as mandatory entities of the German judicial system. The statutory regulations pertaining to this court are set out in § 40 et seq. of the German Labour Courts Act of 3 September 1953.

There are numerous reasons for which it seems essential to conduct research studies on the position of the Federal Labour Court in the German court system, its structure and the proceedings. Even basic statistical data reflect the short duration of the proceedings before this court. Indeed, according to these statistics, the average time for hearing a case is a few months. Assuming that speedy proceedings constitute a universal value guaranteed under Article 6(1), first sentence, of the European Convention of Human Rights (ECHR), the dissertation is focused on the reasons and instruments designed to guarantee the efficiency of proceedings before the Federal Labour Court. It is also worth noting the aspect relating to the participation of lay judges in the formations of the Court alongside professional judges. Another important reason for which it is reasonable to conduct research is the subject matter specialisation of the panels (*Senate*) of the Federal Labour Court. In addition, the absence of a separate and independent labour code in Germany increases the role of the Federal Labour Court as the guarantor of legal certainty and uniformity of case law.

The considerations regarding the institution of the Federal Labour Court within the constitutional system of the Federal Republic of Germany, as well as the system and procedural norms governing the functioning of this court, focus on research problems relating to the efficiency of the proceedings in the light of the standards developed by the European Court for Human Rights (ECtHR) under Article 6(1), first sentence, of the ECHR, the instruments designed to ensure uniformity of jurisprudence, the participation of representatives of employees and employers in the hearing of cases and the dialogue of the Federal Labour Court with the Federal Constitutional Court and the Court of Justice of the European Union.

The considerations are conducted using the dogmatic as well as the theoretical method, and as an auxiliary tool the historical and legal method, and to a limited extent the

comparative method. The paper analyses the case law of the Federal Labour Court, other German courts and tribunals; the case law of the Court of Justice of the European Union and the European Court of Human Rights are also taken into account.

To achieve the objective of this dissertation, it was divided into seven chapters.

Chapter one deals with the place of the Federal Labour Court in the judicial system of the Federal Republic of Germany. It refers to the creation of the five highest federal courts and tribunals and the institutional guarantee of existence of the Federal Labour Court. The chapter outlines the development of the labour judicial system in Germany and its current organisation as an independent and equal division of the judiciary. The overview also covers the professional specialisation of judges stemming from such an organisation of the labour judicial system, which seems to translate into the efficiency of proceedings before these courts, including in particular the Federal Labour Court

The norms which form the system of the Federal Labour Court and issues relating to the internal organisation of this court, with a particular consideration of the instruments designed to ensure uniformity of jurisprudence and the development of the law, are analysed in chapter two of the paper. Special attention was devoted to the panels of the Federal Labour Court, including their subject matter specialisation. Moreover, the evolution of the significance of the institution of the Great Panel (*Großer Senat*) over the years has been analysed.

The third chapter of the dissertation deals with the status of the judges of the Federal Labour Court. This chapter discusses the solution adopted by the German legislator with regard to the procedure for the appointment of professional judges of the Federal Labour Court, which is enshrined in the Constitution itself and which attributes a significant role for the executive power. This chapter analyses the course of the proceedings before the Commission for the Appointment of Judges, highlighted possible regulatory deficiencies of the procedure and referred to the case law of the Court of Justice of the European Union concerning the status of the German court in the light of the system of values enshrined in the treaties. The dissertation also refers to the special solution adopted by the German legislator, namely the participation in the formations of the Federal Labour Court of lay judges who are drawn from both employers and employees, and who are proposed by trade unions, organisations of employees and employers. This historically established and maintained model of participation of lay judges in the process of adjudication of labour law cases, including in the Federal Labour Court, where the selection of candidates to be appointed is influenced by formalised organisations representing employees and employers, seems to have

contributed to the benefits of diverse professional and life experiences of the representatives of these groups.

The course of the proceedings before the Federal Labour Court, together with the measures of appeal examined by this court, is discussed in chapter four. The Federal Labour Court is in principle a court of third instance, a court of law and a court of revision. Therefore, this chapter analyses in depth the two most important measures of appeal examined by the court being the subject matter of this paper, namely the revision (*Revision*) and the complaint of infringement of law (*Rechtsbeschwerde im Beschlussverfahren*). The chapter points to the system of remedies that are characteristic of German labour law proceedings that must be admitted by the court of lower instance, combined with a review of the determination in this respect by way of complaint to the Federal Labour Court. Indeed, the burden of admission of these remedies, namely admission of the right to bring them by the participant in the proceedings, lies with the courts of lower instances and the review of these determinations with the Federal Labour Court. Consideration was also given to the types of adjudications in Federal Labour Court proceedings and their consequences. The work also refers to proceedings in which the Federal Labour Court decides as the first and also the last instance.

Chapter five of the dissertation deals with activities of the Federal Labour Court as participant in the judicial dialogue with the Federal Constitutional Court and the Court of Justice of the European Union, and the relevance of the effects of this dialogue for the interpretation of EU labour law regulations. The German legal system comprises the institution of constitutional complaint against a judgment and, consequently, also against a judgment of the Federal Labour Court. Compared with the rulings of the Federal Labour Court, the number of well-founded constitutional complaints appears to be low, which demonstrates that constitutional rights and freedoms are properly protected by this court. In addition, it is also worth noting the increasing activity of the Federal Labour Court in addressing preliminary questions to the Court of Justice of the European Union.

Then, chapter six of the paper is concerned with issues of efficiency of the proceedings before the Federal Labour Court, with particular reference to their speed. The average duration of proceedings before the Federal Labour Court between 2005 and 2022 was analysed in terms of whether the standard of hearing a case within a “reasonable time” within the meaning of Article 6(1), first sentence, ECHR developed by the European Court of Human Rights is met. Furthermore, the chapter referred to the legal remedies available to participants in the proceedings in Germany on the basis of the Act of 24 November 2011 on

legal protection in the event of excessively lengthy proceedings and preparatory proceedings in criminal cases, which also applies to the proceedings before the Federal Labour Court.

The conclusions from the research carried out are included in the final parts at the end of individual chapters of the dissertation and, in addition, chapter seven presents conclusions relating primarily to the research problems identified in the Introduction. Therefore, this chapter summarises the conclusions that are most relevant to the topic of this dissertation and selected research problems.