

In light of the economic downturn, do you see any changes/trends in labor relations and labor law in Europe or in any particular European countries? What are your views of these changes?

The financial crisis has hit all European countries – inside and outside the Euro-zone. They all had trusted in the free market and liberalized the banking system. All kinds of speculations were admitted; so the Lehman disaster could have its impact on the European economies. Many banks refused credits, investments decreased; thus, the crisis could develop in the so-called real economy.

The labour market depends on the other markets. Workers will lose their jobs. Unemployment grows if there is no state intervention. In this situation, the German Government did a good job and was supported by labour unions and employers' associations. Instead of dismissals, the so-called "short-time work" was used: Working hours were reduced to 20, 15 or even 0 hours weekly the workers getting a compensation of roughly two thirds of their salaries they would have earned if they had worked regularly. This model could be used until two years, which in most of the cases was not necessary. In 2009, the gross national product decreased by more than 5 %. Because of the business support programme financed by the State and the flexibility of many enterprises it was possible to reach an increase of about 4 % in 2010. The German economy kept its qualified workers and protected them from unemployment. In other European countries this policy was not followed in the same way. The unemployment rate increased, but the industrial relations as such remained unchanged everywhere.

That was different for the debt crisis following the financial crisis. Countries like Greece, Ireland, Portugal, Spain and Italy needed financial support from the European Central Bank. It was given only under the condition to reduce public expenditure, especially social benefits. So in Greece the pensions were reduced by 25 % and the same is the case with unemployment benefits. Even salaries in the public as well as in the private sector were reduced. According to neoliberal convictions, workers rights were reduced in these countries, too: It will be easier for the employers' side to dismiss people without paying a compensation, and more difficult for unions to get good collective agreements. "Low wages and low labour standards are an incentive to investment" - this is the dogma but in Europe it does not function. The motivation of the workers will be destroyed. And there is much less demand on the market. The Greek

economy has gone down more than 12 % in two years and the race to the bottom is going on. There have been general strikes against the Governments in different countries – but as long as there are neoliberal dogmatists in power there is no real chance to get a better situation. We stay with two Europes in the Euro-zone: A rich one with unchanged industrial relations and a poor one where the workers have lost many of their rights.

Have you got some experience with labor law in developing and transitional countries?

I have some experience with Vietnam where I have been as an adviser for five years coming from time to time to the labour ministry, to the social commission of the Parliament and to the trade unions.

The strategy of the Vietnamese government was (and is) to attract foreign investment by offering low-paid workforce. Technology transfer is welcome but not the rule. Many workers in foreign owned companies can survive only by working a lot of overtime; during the 48-hours week they earn normally 110 % of the minimum wages which can in no way be sufficient.

Since nearly 10 years there are many wild-cat strikes especially in enterprises owned by Korean, Taiwanese and Japanese people. A strike comprises normally the personnel of one enterprise with an average of about 600 participants. Last year there were about 500 strikes of that kind. The union existing in the enterprise is never involved. According to the law, it is entitled to organize a legal strike, but only under conditions it will never fulfil: If negotiations with the employer fail, there has to be mediation. If mediation fails, there will be arbitration. If the result of arbitration is not accepted, the union in the enterprise has to find out workers' opinions. If the majority supports the idea of a strike for certain demands, a legal strike is possible, but it has to be announced to the employer at least five days before taking place. During this time, the employer may influence the workers to refrain from their action. This procedure is too complicated and too time-consuming for being used. It would be more honest to put a rule in the law that strikes are forbidden.

Additionally, enterprise unions have normally a president which is a manager – deputy director or responsible for human resources. Why should he organize a strike against his colleagues? So the workers do not trust in the official legal structures and act for their own

account. The local authorities normally support the strikers; as far as I know, workers have been never punished for going on strike.

Should Vietnam as a socialist State with a socialist constitution not change its laws in order to offer fair conditions to the workers to improve their situation? Would it not be possible to raise the minimum wage to an adequate level as the gross national product grows more than 5 % every year? Would it not be possible to reduce overtime work?

The Labour Ministry had the task to elaborate a new labour code “considering the actual changes”. It was my function to give advice during that process. In the beginning, most of my counterparts agreed that there must be a fundamental reform with a real right to strike for the unions. The union on the enterprise level should undergo a reform as well, in the sense that new people elected by the workers should take over the leadership. I could even publish such a view in an interview with a big trade union newspaper.

But nearly two years ago, the labour ministry presented a draft which took a turn for the worse: For collective negotiations and strike the same procedure as before. The only modification: Mediation and arbitration outside the enterprise which should guarantee more “neutrality”. On the other hand, strikers should not only be responsible for damages (which is a theoretical question seen their economic situation), but have to perform unpaid overtime in order to compensate the strike period. If the strike fails, that new alternative could become realistic. Overtime hours? Still 200, as before, but the Government can now authorize the employer to demand 350. Happy new world.

Which are the reasons for this stubborn and hard-headed position? “Vietnam is not a learning society” a friend told me, but this evaluation is too general. Another person working in the field much longer than I did told me one evening: If you are a doctor, you are paid unofficially, if you are a judge you are paid by the winning party, if you are professor you sell the exams. What can a poor ministry of labour sell? The labour inspection may be generous, of course, but that happens on a decentralized level. Well, they sell their drafts to a group of investors and they are as well off as other people. I do not know whether he was right, but I cannot exclude it. So there will be a change only if there will be so many strikes that the political system as such will be in immediate danger. In such a situation the payments

themselves will be at risk, too, and a real reform will be considered to be necessary even by the Ministry.

Your observation of the development of Chinese labour law since 1994

Thank you for going to another world. My first contact with Chinese labour law was quite a curious one. In 1994, I got a call from the Beijing representative of a German foundation. Our Chinese partners want a professor to come to Beijing during the next three weeks to make a seminar on labour courts, he told me. Would you be able to come? As I never was in China before, I agreed despite of having no time. The participants of the seminar were full of questions, often very detailed ones; I felt like in an exam. They had very precise information about the German situation and wanted to make it still more profound. Two years later, I came again to China and I met a German expert on labour law. We found out that he had handed over a draft law on labour courts to the Labour Ministry just three weeks before my seminar took place. I had known nothing about it; that was quite an unusual, but an intelligent way of controlling experts.

In 1995, the Chinese “Labour Act” came into effect. I found it a mixture of different ideas, with very much open space to fixed-term contracts. The protection against dismissal as such was rather good. It was a law to make market economy easier to handle, but it was obvious that in the years before, market economy had been realized under conditions with a much higher protection of the workers. The possible frictions were not accessible for me.

It took more than ten years before a new stage was reached. The preparation of the “Labour Contract Law” marked a drive towards much more protection of the workers. The first draft contained a provision unique in the world: If workers and employer do not agree about the work rules, the proposal of the workers’ side should prevail. The American Chamber of Commerce wrote that the situation for investors would be “worse than in Europe”. On the other hand, a German treatise on labour law mentioned this idea even in its foreword as an example of innovation. But during the legislative procedure the interests of the employers became more and more visible. The ultimate version which became law still contains many rules that improve the situation of the workers. It will now be up to the courts and other institutions to concretize these provisions.

Please share your view on how to improve enforcement of labour contract law (labor inspection) in China

The labour contract law pays special attention to the implementation problem. The Chinese legislator did not want to create “law in the books” but “law in action”. It contains a lot of rules you nearly never find in other legal systems. To give just an example: If the worker does not get a written contract within a month, he is entitled to the double of the salary until the employer fulfils its obligation. Or another one: If the salary is not paid, the labour inspection can ask the employer to pay until a certain date. If he does not, he has to pay an additional sum between 50 % and 100 % of the amount which he owed originally.

In my view, the problem is not the law. One needs a labour inspection which is able to use its legal powers. The first problem is that in no country the labour inspection has enough collaborators to fulfil in a sufficient way its functions. With the economic development it should be possible to tackle with this problem; it becomes a question of political will. A second point is that they have to be paid well in order to attract qualified people and to avoid unofficial payments coming from the enterprises. A third one is possibly the most difficult one: A labour inspection has to be independent of those that have to be controlled. If the inspector is part of the local community it will be difficult for him to inflict sanctions against an employer whom he will meet at the golf course or singing karaoke. Besides this personal problem there is a structural one: If the town or the district wants to keep an investor by all means, it would be not accepted if the labour inspector would insist in applying all rules of labour law. It seems quite wrong to call this “corruption”; it is just the local or the regional interest to be observed if the inspector wants to continue the job in an adequate manner. The way-out can be in the direction to have labour inspections competent for a relatively big area and having many inspectors whose competences for concrete cases are assigned by lot (or by another form of chance). German courts are organized in such a way in order to guarantee their independence.

Please share your views on how to improve rules on collective agreements under China’s labour law

Collective agreements have three main functions.

- They protect the worker. A union or another representation of workers has bargaining power which the individual worker has not or only under exceptional circumstances. The collective agreement can fix labour conditions which by their nature cannot be the object of an individual contract – take the simple example of a prohibition to smoke or many questions of working time.
- Collective agreements have an important economic function. They can adapt wages and working conditions to the situation of the enterprise or the branch. The higher the productivity is, the higher the possible wages, the better the working conditions. If the situation goes down, an adjustment is easier to realize by changing the collective agreement instead of changing 300 labour contracts. The workers themselves are interested in such kinds of collective agreement: In good times, they get more, in bad times they keep their working places in renouncing temporarily to certain rights. The collective agreement is thus an instrument of flexibility.
- Collective agreements have a political function. It is up to the workers and the employers to find a compromise. If individuals or groups of them are dissatisfied, they have to criticize their respective organisations. The Government is no more responsible for the level of wages and other labour standards except minimum wages and labour legislation. The political system is “discharged” – as political scientists in Germany say.

These collective agreements can be concluded on enterprise and on branch level. The second case has the advantage of taking social costs out of (national) competition. In some exceptional cases, they can even be concluded on national level because a certain question (e.g. the professional training) has to be regulated in an identical way for all enterprises. This is, of course, a European experience. In China, the bargaining system will probably always stop at the provincial level but the arguments in favour of collective bargaining as such should be carefully examined in China, too.

The role of labour unions

Collective agreements can fulfil their functions only if strong trade unions exist and negotiate with the employers. “Strength” means in the first place independence from the

employers. No good results can be reached if the president of the union on the enterprise level is at the same time a manager. You cannot carry water on both shoulders, says a German proverb. And in the private sector, there are two sides with different interests. The employers want to minimize their labour cost, the workers desire higher wages and shorter working time. Compromises can only be attained if the union can exercise pressure on the employers. This is an experience made all over the last two centuries and in most of the countries. The “pressure” will normally consist in a strike or in a different form of refusing work. In some cases, a “work to rule” or another way of reducing the output of work may fulfil the same function. But the normal case is strike. The German Federal Labour Court has declared that “collective bargaining without the right to strike is nothing but collective begging”.

Most unions will not use the right to strike at every possible occasion. As workers lose their salaries during strike-time, it is normally considered as a “last resort”, as a means applied only if no alternative remains. As a rule, the threat to go on strike is sufficient for the employer to accept a compromise. Why should he wait until the strike is organized and the production interrupted?

Is a strike not a contradiction to harmonious employment relationships? If it is seen in an isolated way the answer must be “yes”. But we should not stop at that point. A strike is an expression of deep dissatisfaction which can increase more and more if there is no way out. The better solution is to face the conflict: After a thunderstorm life is often easier because people are more relaxed – at the end there may be even more harmony. Why not transfer this experience to industrial relations?

Will a union with a right to strike not transform itself into an organisation completely outside the established structure of the society? One could ask the same question as to enterprises maximizing their profit and thus pursuing goals that they define themselves, “autonomously”. Private enterprises are accepted because they are controlled by formal and informal mechanisms. Trade unions can be controlled in the same way. Two powers neutralizing each other – will it not improve the possibility to control?

Your general impression of Chinese people and Chinese development

Before I came to China for three months in 2006, I told it to a lot of friends in Germany. Most of them reacted quite positively in the sense “I would like to be at your place and go to China, too”. But there were exceptions. One colleague told me: “I wish you come home from China still alive and in good health” – he had the impression that I would make an expedition to hell and would perhaps not be able to escape the devil. “You will probably have a person supervising you day and night” was his sincere conviction. In China, people laugh spontaneously if I tell the story. But it is clear – there are a lot of prejudices of that kind in Europe.

My personal experience was just the contrary. There are no problems of security in Beijing or Shanghai and there is no police-state supervising me. People are open-minded and friendly. Students want to know a lot of things. There is a spontaneous interest in knowing more about Europe and especially Germany. And sometimes I get the question: How do you see the future of China? Will there be elections like in the U.S.? That was a big discussion point. Is there a difference for American people to be governed by a conservative republican like Bush or a progressive democrat like Obama? In my opinion not. This kind of election is won by the person having more money and a nicer face in television; the substance of politics remains always the same.

In political discussions, I was a little surprised by the absence of Marxist theory. It is taught at the universities, students learn some principles by heart and afterwards forget it. That is a pity because Marx can lead to valuable knowledge on the functioning of the market economy. But my impression is that a critique coming from an American economist would have better chances to be picked up than a monograph written by Marx. But I hope one will rediscover Marx one day – of course not in the sense that he was always right; unlike in the Soviet Union, his books must never be a kind of surrogate of the Bible.

“We are Chinese” is a commitment all my dialogue partners had. Not in a very open way, but you feel it. In my view, that is the element which holds society together. For a foreigner, it is quite a comfortable situation because he will be treated extremely well – Chinese practice much more empathy than we do in Europe. At the same time, people are

full of energy. Everybody can today bring in his or her contribution to the functioning of society – a Chinese friend told me once. But there are conflicts, too; empathy does not exclude shouting at each other and making decision processes very complicated. The way to the future is not a straight line.