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## **On Peace Obligation in German Labour Law**

**Professor Dr. Rüdiger Krause  
Georg-August-Universität Göttingen**

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# Outline

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- I. The peace obligation: Still topical**
- II. Historical foundations of the peace obligation**
- III. Conceptual foundations of the peace obligation**
- IV. Scope of the peace obligation**
- V. Conclusion**



## The peace obligation: Still topical

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**Federal Labour Court (Bundesarbeitsgericht)**

**26 July 2016 – 1 AZR 160/14:**

**Main facts:**

- In 2011/2012 labour dispute between the „Gewerkschaft der Flugsicherung“ (trade union for air traffic controllers) and „Fraport“ (operator of the Frankfurt airport)
- Voluntary arbitration procedure ended with a recommendation
- Recommendation comprised some amendments of the (partly) still existing collective agreement
- Recommendation was not accepted by the employer
- Trade union called employees on strike for the enforcement of the entire recommendation (including the amendments of the existing collective agreement)



## The peace obligation: Still topical

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**Federal Labour Court (Bundesarbeitsgericht)  
26 July 2016 – 1 AZR 160/14:**

**Main grounds:**

- **Strike was an infringement of the peace obligation  
(in accordance with Labour Court and Regional Labour Court)**
- **Trade Union has to pay compensation for damages to the employer  
(deviating from Labour Court and Regional Labour Court)**
- **No excuse with the argument of „lawful alternative conduct“  
(„rechtmäßiges Alternativverhalten“)**
- **Damages: 5.8 million EUR**

**Comparable:**

**Federal Labour Court (Bundesarbeitsgericht)  
10 December 2002 – 1 AZR 96/02:**

**Trade union (ver.di) has to pay compensation for damages of 3 million EUR  
on the grounds of an infringement of the peace obligation**



## The peace obligation: Still topical

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**Context:**

**Settled case law:**

**The peace obligation prohibits every industrial action with the aim to alter the provisions of an existing collective agreement**

***Prima facie* surprising:**

**No indication for the existence of a peace obligation in the Collective Agreements Act (Tarifvertragsgesetz) or in any collective agreement**

**The only justification given by the BAG (e.g. decisions of 1982, 2002, 2003, 2007 and 2015):**

**Each collective agreement is (automatically) a „peace order“ („Friedensordnung“)**

**A circular reasoning?**



# Historical foundations of the peace obligation

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## Round 1900:

Trade unions (e.g. *Carl Legien*, 1902) > Collective agreements contain the promise of a temporary abstinence from any industrial action

Legal doctrine (e.g. *Hugo Sinzheimer*, 1908) > Existence of a peace obligation as obligatory part of each collective agreement (mainly in the economic interest of the employer)

Imperial Court (Reichsgericht, 1910) > Collective agreements are binding contracts *and* prohibit any strike for higher wages during their existence (otherwise they would be „worthless“ for the employer)

1918 and 1949 > No regulation of the peace obligation in the Collective Agreement Acts

However even the trade unions suppose the existence of a peace obligation in their draft of a Collective Agreement Acts (1948)



# Conceptual foundations of the peace obligation

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**Theories for the justification of the peace obligation:**

**Peace obligation as part of law („Immanenztheorie“)**

- **(Now) Customary law**
- **Part of labour law**
  - **General function of collective agreements as instruments not only to regulate employment relationships but also to keep industrial peace**
  - **Peace obligation contributes to the proper functioning of the collective bargaining system which is as such advantageous for the employee side**
- **Part of contract law**
  - *Pacta sunt servanda*
  - **Peace obligation as *quid pro quo* of the trade union**

**Peace obligation as (implied) part of the collective agreement („Konsenstheorie“)**

- **Indication: Clauses on the duration of the collective agreement etc.**



## Scope of the peace obligation

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### **Several dimensions of the peace obligation**

- **Object of the peace obligation**
- **Obligated party and beneficiary of the peace obligation**
- **Beginning and end of the peace obligation**
- **Concrete content of the peace obligation**
- **Lawfulness of contractual modifications of the peace obligation**
- **Enforcement of the peace obligation**





# Scope of the peace obligation

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## Object of the peace obligation

### General approach:

- Interpretation of the collective agreement in question
- Identification of the “pacified area”
- Courts use to refer (not fully coherent) to the will of the parties to the collective agreement
- Formula of the BAG:

**An industrial action infringes the peace obligation if the aim of the strike is directly regulated in an existing collective agreement or is closely connected (“enger sachlicher Zusammenhang”) with the provisions of that collective agreement**



# Scope of the peace obligation

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## Object of the peace obligation

### Examples for infringements:

- Existence of a collective agreement on wages
- Strike for an increase of wages or another kind of a remuneration
- Existence of a collective agreement on paid leave
- Strike for an increase of the leave
- Existence of a collective agreement on a protection against dismissals
- Strike for an additional protection against dismissals in the case of the privatization of public services  
(BAG 10 December 2002 – 1 AZR 96/02)
- Existence of a collective agreement with (general) provisions on the compensation for employees with health problems
- Strike for a provision in a collective agreement on the particular compensation for employees who have suffered a work accident  
(BAG 26 July 2016 – 1 AZR 160/14)



## Scope of the peace obligation

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### Enforcement of the peace obligation

- Real obligation > Enforceable at Labour Courts
- Beneficiary (each party to the collective agreement *and* the members of the parties > single employer) can sue the obligated party (trade union)
- Omission of any industrial action (relevant mostly in the case of labour injunctions)
- Claim for damages (if the conduct of the obligated party was at least negligent)



## Conclusion

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- **Existence of a peace obligation is deeply rooted in German labour law**
- **Long lasting case law (since 1910)**
- **Supported by legal doctrine *and* social partners**
- **Consideration of the economic interest of the employer in stable labour costs**
- **Juridification (“Verrechtlichung”) of industrial conflicts as “German path”**



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# Takk for oppmerksomheten!