

Limitation of the external liability of works council members under works constitution law in accordance with the principles on privileged employee liability

Summary of the dissertation

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According to Sec. 40 (1) of the Works Council Constitution Act, the employer bears the costs arising from the activities of the works council. However, works council members may not cause unlimited costs because of the fact that Sect. 40 (1) of the Works Council Constitution Act is supplemented in the established jurisprudence by the unwritten constituent element of 'necessity'. The indeterminate legal term of 'necessity' is thereby the linchpin of all legal (trans)actions of works council members.

This is all the more true since the Federal Court of Justice decided in its landmark ruling of 2012 (Federal Court of Justice, the ruling of 25 October 2012 - III ZR 266/11) that a liability of the works council chairperson may apply if the threshold of what is necessary is exceeded when engaging third parties outside the sphere of operations. According to the Federal Court of Justice, the works council as a body lacks the legal capacity required for entering into legal transactions with third parties which are not necessary for the activities of the works council. Due to the fact that the works council cannot subsequently become a contractual partner of the third party with regard to the part of the contract that is not necessary, the chairman of the works council, who represented the works council when the contract was concluded, acts as a representative without power of representation and must be liable for the damage incurred by the third party.

The present dissertation examines whether it is possible to privilege the externally liable works council chairman according to the principles of limited employee liability. On the basis of the above-mentioned highest court ruling, it is explained which dogmatic assumptions form the basis of the liability of works council members and which risks result from the jurisdiction of the Federal Court of Justice for the honorary office of the works council. Furthermore, it is analyzed which principles and evaluation aspects have been applied by the courts to develop

the principles of limited employee liability. By systematically comparing the operational position of works council members and other employees who are not office holders, it is examined whether and to what extent these criteria are transferable to works council members.

The dissertation comes to the conclusion that the essential maxims applied by the jurisdiction to justify the principle of limited employee liability can be applied almost without exception to the interests of works council members who cause damages during their work for the works council. In order to avoid a disadvantageous position of works council members in terms of liability law compared to other employees, the personal and factual scope of the limited employee liability is to be extended to works council members who cause damages in the course of their activities for the benefit of the works council. As a result, the employer is obliged - in accordance with the principles of internal compensation for damages - to (partially) answer for damages to third parties, as far as these were caused by the acting works council member only through slight or medium negligence.