PRESS RELEASE

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HR Lawyers prevents extension of labour disputes by way of "wildcat" strikes

What is the scope of the constitutionally guaranteed right to go on strike? This question arose in the cases of three delivery couriers ("riders") of the Quick Commerce company Gorillas (now part of the Getir Group), who were dismissed in October 2021 as a result of a non-unionized ("wildcat") strike. After both the ArbG Berlin and the LAG Berlin-Brandenburg deemed the dismissals to be effective, the riders appealed to the Federal Labour Court (FLC). KLIEMT.HR Lawyers successfully defended against these appeals. The terminations declared by the company were thus confirmed as lawful in the last instance (in two cases, as termination with immediate effect).

In October 2021, **Gorillas** was confronted with protests by a group of riders who had formed a self-proclaimed "Gorillas Workers Collective" and organized mainly via social media and short messages. Instead of an organized protest within the constitutionally guaranteed framework – per usual strike practice –, there were tumultuous scenes in which employees inter alia stopped work without permission, blocked access to stores (warehouses) and turned delivery bikes upside down. The company responded by dismissing the riders who it considered to be involved without notice, as it did not consider this behavior to be covered by the right to go on strike.

The **political dimension** of these cases was already evident in the dismissal protection proceedings before the lower instance courts: the employer (and the courts following its lead) argued that participation in strikes was only constitutionally protected if the strike was supported by a trade union or other coalition. However, the right to strike wouold not permit persistent refusal to work by groups of employees that are not even remotely structured in a democratic m anner. The plaintiffs' side, on the other hand, argued much more polemically: not only was the German system of social partnership called into question (the German right to strike was called “no longer up to date”), but the work represented "modern slavery legalized by judicial law" and there was "a fascist nature to the current case law".

Beyond such dramatic issues, the dogmatic question arose as to whether the **Revised European Social Charter** (RESC) in Part II Art. 6 No. 4 also permits non-unionized and non-structured “loose” coalitions, so that the German understanding of Art. 9 para. 3 sentence 1 GG would have to be revised.

The Labour Court and the Regional Labour Court followed the employer's reasoning: in two cases in which participation in the "wildcat" protest could be proven, they considered dismissal for cause with immediate effect to be justified; in a third case, in which the employee's participation in the strike during working hours was less clear, they considered **dismissal** during the waiting period to be **appropriate** in any case. The courts

made it clear that a strike can only be directed towards a goal which can be collectively governed - which in turn presupposes the existence of a coalition (typically a trade union) or at least a grouping with a minimum level of membership organization as well as a vote on which demands should be accomplished.

The Riders lodged a non-admission appeal against the decisions in all three cases with the Federal Labor Court (Case Ref. 1 AZN 653/23, 1 AZN 655/23, 3 AZN 654/23). They substantiated these in detail with alleged violations of higher-ranking law and alleged procedural errors. HR Lawyers countered this by arguing that the alleged violations of the law were not relevant to the decision, but that the German interpretation of the right to strike was in line with European law. In particular, we argued that a loosely organized group that communicates via social media and short messages without any structured membership or democratic organization is not comparable to a coalition within the meaning of the German Basic Law.

The Federal Labor Court rejected the non-admission complaint as unfounded in two cases and dismissed it as inadmissible in one case and fully followed the argumentation of KLIEMT.HR Lawyers.

Representing Getir/Gorillas before the Federal Labour Court: KLIEMT.HR Lawyers, *Dr. Till Heimann* (Partner, Düsseldorf/Frankfurt, lead) and *Jutta Heidisch* (Senior Associate, Frankfurt).

KLIEMT.HR Lawyers in brief:

With more than 90 lawyers working exclusively in labour law, KLIEMT.HR Lawyers is the largest law firm in Germany specialising in labour law. The firm was founded in 2002 as a spin-off of a team led by Professor Dr Michael Kliemt and Dr Oliver Vollstädt from the Düsseldorf office of Clifford Chance. With offices in Düsseldorf, Frankfurt am Main, Munich, Berlin and Hamburg, the firm is now considered one of the market leaders in employment law. More than half of the DAX-listed companies, a large number of successful German SMEs and several globally active corporations rely on KLIEMT's labour law expertise.

Aside from transactions, KLIEMT.HR Lawyers advises, inter alia, on the implementation of restructuring and integration projects as well as on collective bargaining issues. Other areas of focus include works constitution law, company pension schemes, employee leasing, code of conduct, compliance and data protection. In addition, the law firm supports companies and top executives in all questions of manager liability, including litigation.

KLIEMT.HR Lawyers is the German member of IUS LABORIS, a global alliance of leading employment law firms in more than 55 countries and associated law firms in another 60 countries. KLIEMT.HR Lawyers - together with the IUS LABORIS partner law firms - offers seamless employment law services in more than 100 countries worldwide.

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