

The "Parsifal" judgment on the guest contract

Is the guest an employee or self-employed?

In this 2007 judgment by the Federal Labour Court, the guest contract, which until then had been legally qualified as an employment contract, was reinterpreted as a pure service contract and thus declared guest stage artists to be entrepreneurially self-employed. The court was of the opinion that although during the rehearsal period there was an integration into the work process of a theatre, which was typical for an employment relationship and thus a duty to follow instructions, this did not apply to the performance period, where the contractual focus was on the performances.

In this context, it was pointed out that the amount of the evening fee was far different from the low flat-rate rehearsal fee, which was why the focus of the employment, also measured by the payment, was to be assessed as self-employed.

It was also considered that the artist was not economically dependent on the theatre in question, as he had several other engagements at the same time, which also influenced the decision.

An opera singer had sued for continued payment of wages in the event of illness after he had cancelled a performance agreed in the guest contract due to a cold.

This judgment means that the guest is no longer regarded as an employee, although he is bound by instructions during rehearsals and subject to the stage's power of direction, as well as being subject to social security contributions.

They are not subject to most of the protective regulations of labour and social law, such as continued payment of wages in case of illness, the Working Hours Act, the Maternity Protection Act, etc., and are not insured against accidents through the stage.

The judgment should be viewed critically because it no longer corresponds to the legal reality of the vast majority of guests at theatres.

Therefore: This judgment cannot be applied "across the board" without examining the individual case.

Sources: according to Hans Herdlein 2009; dejure.org revised Schwaninger 2021.