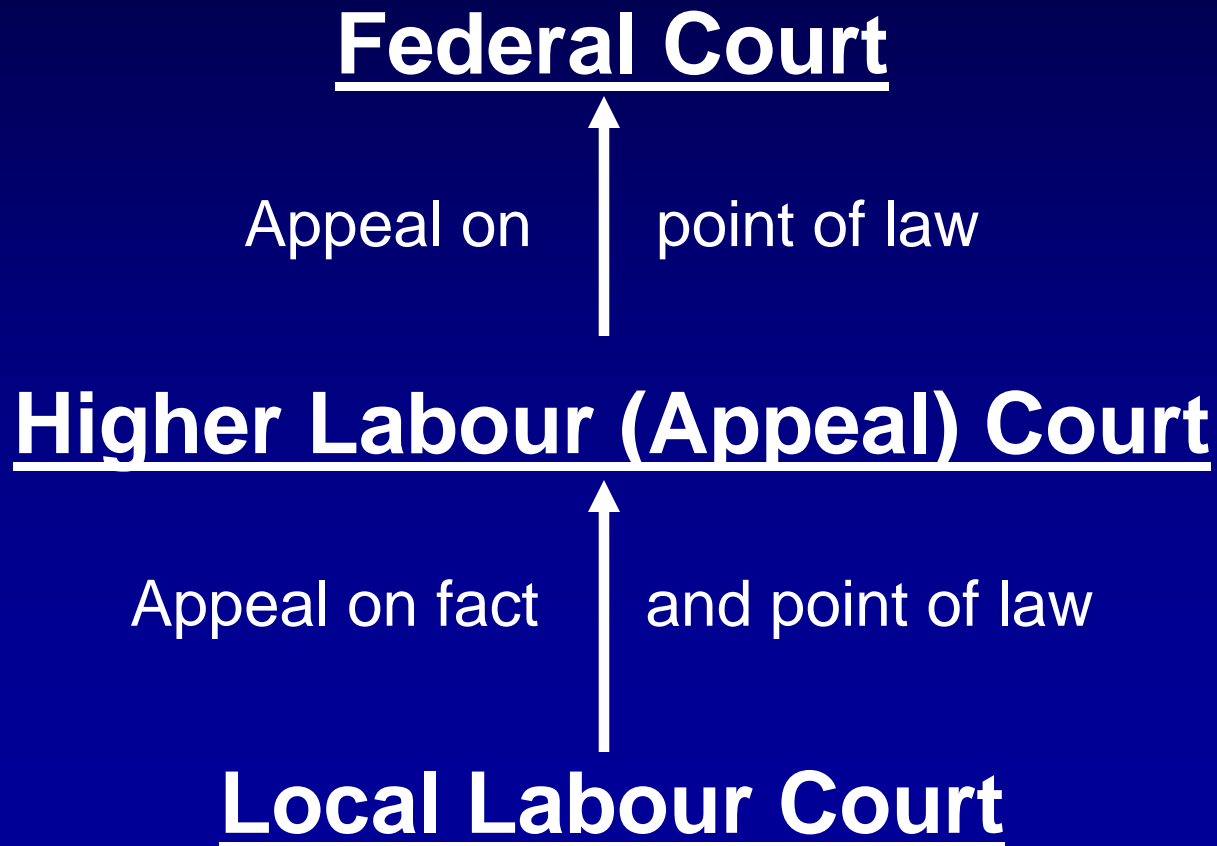


Labour Courts in Germany and their Influence on Settlement of Labour Disputes

Dr. h.c. Reinhard Schinz
Chief Justice at the
Higher Labour Court, Berlin

Labour Courts in Germany



Court Panel

- Labour Court: 1 professional judge
2 lay judges
-

- Appeal Court: 1 professional judge
2 lay judges
-

- Federal Court: 3 professional judges

6 lay judges

Legal Representation

- Labour Court:
 - ◆ no representation necessary
 - ◆ legal aid if appropriate
 - ◆ representation by lawyer, union representative or anyone
- Appeal Court:
 - ◆ representation required
 - ◆ representation by lawyer or union representative
- Federal Court:
 - ◆ representation by lawyer required

Costs

- Labour Court:
 - ◆ Court fees: Loser
 - ◆ Lawyer's fees: each party their own
 - Appeal Court:
 - ◆ Court and both Lawyers's fees: Loser
 - Federal Court:
 - ◆ Court and both Lawyers's fees: Loser
-
- Typical costs of employment protection case:
10,000 €

Labour Court Proceedings I

■ I. Conciliatory Hearing

- ◆ obligatory
- ◆ before the Presiding Judge
- ◆ within 2-4 weeks after filing the suit
- ◆ result:
 - ★ either settlement (50 – 80 %)
 - ★ or session before full panel (within 2-6 months)

Labour Court Proceedings II

■ II. Full Panel Session

- ◆ Court's duty to advocate a settlement at any stage of the trial
- ◆ Judge may suggest terms of settlement at any time, in and out of session
- ◆ Court can combine proposal for settlement with judgement „in pectore“

Settlement in Employment Protection Cases

- no statutory compensation for wrongful dismissal or redundancy
- judgement: reinstatement or nothing
- settlement: acceptance of job loss, compensation by agreement
- average compensation: $\frac{1}{2}$ month's salary per year of service

Arbitration in Collective Law Matters

- Law of co-determination: employer needs works council's consent
- If parties disagree: Either party can appeal to arbitration committee
- Arbitration committee consists of even number of party representatives and one judge as chairperson
- Chairperson is appointed by consent or by court decision
- Committee's ruling is subject to appeal

Out-of-Court Settlement

- no public arbitration or conciliation service
- no institutionalised union conciliation
- lawyer's fees as incentive for out-of-court settlement
- settlement offer by employer in case of dismissal
 - ◆ redundancy
 - ◆ waiver of wrongful dismissal action
 - ◆ compensation set by statute
 - ◆ no practical value

Conclusions

- no effective out-of-court arbitration
- result: employees either give in or go to court
- many labour disputes end up in court
- high work load of labour court judges
- insurances for legal costs are popular
- high risk of deteriorating labour relationship by law suit against employer
- role of judge: as much social worker and psychologist