SOCIAL JUSTICE
DECENT WORK

XXVII MEETING OF EUROPEAN LABOUR COURT JUDGES (ELCJM)

DATA PROTECTION AND DIGITILISATION

National Report[1] – Preparatory Questionnaire for the European Labour Court Judges Meeting

General Reporter: Alan Haugh, Deputy Chairman, Labour Court of Ireland

INTRODUCTION

The issue of workers' privacy and its protection was the subject of discussion at the Twelfth Meeting of European Labour Court Judges in 2004. The development of technology and its ability to combine and interrogate vast amounts of personal and other data in the intervening period has been unprecedented.

In response, lawmakers at the EU and national levels have attempted to put in place a range of regulatory measures to safeguard citizens, including workers, from the potential abuse of their personal data and the undermining of their general privacy rights. Key recent legislative developments at EU level include the entry into application in May 2018 of the General Data Protection Regulation (GDPR), one strand of the EU's Single Digital Market strategy.

The aforementioned developments in digital technology and concomitant increase in regulation of this area mean it is timely to revisit the issue of data protection during the course of the 2019 meeting of European Labour Court Judges. The focus of the discussion will be on the impact of digitalisation on the work of labour courts.

[1] The views and opinions expressed therein are those of the authors and do not necessarily reflect those of the International Labour Organization.

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REPORTER: JUDGE KOEN MESTDAGH

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer: It is still not possible to submit any document to the Court of Cassation by electronic means. The necessary documents still need to be deposited (manually) at the Court's registrar's office.

To the Labour Courts and High Labour Courts all documents can be submitted by electronic means, except the submission of a new case/appeal or a request to set a calendar for the proceedings.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer: In proceedings before the Court of Cassation, the party that has created it needs to provide the document to the other parties. The appeal request has to be presented to the defendants by a bailiff. The statements of the defendants can since May 2014 be transmitted to the lawyer of the claimants by (e)mail, unless they claim that the appeal is not admissible. In that case the defendant still has to present his statement to the lawyer of the claimants by a bailiff.

In proceedings before the Labour Courts and High Labour Courts, in principle, the party that has created the document has as well to provide it to the other parties. However, the request that submits a new case (if not presented by a bailiff) or appeal to the Court, is provided to the other parties by the registrar's office by means of a special type of registered letter.

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer: No, since there are no electronic submissions to the Court of Cassation. However, the court members are provided with the appropriate technology to research and verify the references to legislation, case law, law

journals, etc. (if accessible to us). Some training in the use of hardware and software is available.

In the Labour Courts and High Labour Courts the judge has access to the submitted documents in the electronic file (read only). To be able to use extracts of the documents in the judgment, the judge needs to get the PDF-file converted by the OCR-service centrally provided by the ICT department of the Ministry of Justice.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer: Not until now for the Court of Cassation.

To permit the electronic submission of documents to the Civil, Commercial and (High) Labour Courts, some articles of the Civil Proceedings Code have been amended.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer: Proceedings are not digitally recorded.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer: No. In civil cases there is no point in recording the proceedings, especially not in our court. We are aware that in criminal cases some criminal lawyers record the orally presented conclusion of the advocate-general with their smart phone to enable them to draft a written reply. Nothing is done to prevent those lawyers to make a recording.

A recording made of the proceedings in a Court of Appeal or a High Labour Court can't be used in the appeal to our court as it would oblige us to judge facts which haven't been established by the appealed judgment.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer: No

8. Are you permitted to take evidence by Skype or through similar platforms?
   i. If so, in what circumstances can evidence be taken by this mode

Answer: The Court of Cassation can't judge the facts of a case and therefore doesn't take evidence.

The rules laid down in the Civil Proceedings Code do not allow the Labour Courts and High Labour Courts to take evidence by such a mode.

   i. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer: /

   ii. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer: /

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer: The use of (more) technology in our court can make the life of lawyer and judge easier but wouldn't in itself change anything in the matter of access to justice.
It is certainly not because our Court rejects the use of it that we lack technology.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer: Just their name, first name and address is required from individual complainants, and, as from February 2019, their national registration number.

11. What data do you collect in relation to businesses?

Answer: From businesses the name, law form and address is required, and, as from February 2019, the national business registration number.

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?

    (Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer: Our court doesn't keep the paper case files but sends them back to the court that has rendered the appealed judgment. The paper case files are retained by the first instance courts for 30 years after the conclusion of proceedings.

No personal data saved in the database have been erased until now. As far as I know, there are no instructions to erase the data after certain period.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer: Only a limited amount of general data concerning the type of cases and the case flow, needed for the annual report, can be obtained by interrogation of the database. The personal data can't be interrogated usefully.

14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer: The database of our Court is only available to the Court. Only our computers provided by the ICT service of the Ministry of Justice have access to he internal network and a username and pin code is needed to get access to the database.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer: No

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer: Such complaints could lead to criminal prosecution, therefore the criminal chamber of our court could have to judge an appeal of a judgment condemning or acquitting the employer.

Labour Courts and High Labour Courts and the labour chamber of our court have no direct role in this. Indirectly they can have to decide whether evidence obtained by a breach of the right to privacy can be used.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer: No, the judge's notes are subject to the secrecy of the deliberation.

18. Has GDPR impacted on the format in which your judgments are published?

Answer: No

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer: Until now, only a selection of judgments of the Court of Cassation is published, some in full, some only partially. E.g. in 2016 of 2.736 judgments, 749 were published. The names of individuals, parties and witnesses, are anonymised. The names of businesses aren't, unless they clearly refer to an individual owner (e.g. if butcher John Doe's business is named 'Butcher John Doe Inc.').

Only a small number of judgments of Labour Courts and High Labour Courts are published, mostly if the judge or the lawyer of one of the parties makes the effort to send a copy to a law journal.

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer: No, but in the immediate future an automated flux of data transfer to the Ministry of Finance will be created in order to collect the procedure costs which are due to the State (before February 2019 these costs were paid in advance by the claimant).

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer: No

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer: No

FINLAND

REPORTERS:
JUDGE OUTI ANTTILA, LABOUR COURT
JUDGE RISTO NIEMILUOTO, LABOUR COURT
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TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:
In addition to the traditional means of delivery (in person, by an attorney or courier, or by post), all trial documents may be delivered to the Labour Court also by fax or e-mail. Such "electronic" delivery is governed by the provisions of the Act on Electronic Service by the Public Authorities (13/2003).

There is a data system project pending in the court system which aims to displace paper documents with electronic documents.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer: Usually both – the party in question as well as the Court – transmit the documents electronically to the other parties.

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer: The Labour Court is composed of a president and a vice-president, both of whom act as full-time chairmen of the court. In addition, there are 14 part-time members and each one of them has two deputies.

The full-time staff is provided with continuous training especially in the future when transitioning to the electronic data system (see **Answer** 1). There is no

special training for the part-time members - unless needed.

All relevant material can be presented electronically during a hearing of a case. The courtroom is equipped with a big screen, an audio-visual camera and a computer for the referendary. The chairman and the members also have individual screens and they can use their own laptops.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer: Act on Electronic Services and Communication in the Public Sector (13/2003) was legislated in 2003. The objective of the Act was to improve smoothness and rapidity of services and communication as well as information security in the administration,
in the courts and other judicial organs and in the enforcement authorities by promoting the use of electronic data transmission.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer: During the proceedings (main hearing) only oral hearings of witnesses are digitally recorded. Parties are entitled to copies of the recordings.

The decision of the Labour Court is final, and there is no ordinary appeal against its decisions to a higher instance.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer: The chairman of the court may allow photographing, video photography and tape recording in an oral hearing. In practice photographing and recording may be allowed before the hearing begins and during the pronouncement of the judgment or decision. Photographing and recording of the whole trial can be allowed only in exceptional cases.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer: See **Answer** 3.

8. Are you permitted to take evidence by Skype or through similar platforms?

ii. If so, in what circumstances can evidence be taken by this mode

Answer: All courts have videoconferencing equipment. In addition to the court, also a party, a witness or the person who is to be heard in the case may propose the use of videoconferencing in the trial. The chairman in the case decides if videoconferencing may be used.

iii. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer: Few times a year.

iv. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer: Usually yes.

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer: Yes. The use of technology aims to improve court services and to save evidence costs without compromising the legal safeguards.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer: The Labour Court hears disputes arising from collective agreements, collective civil cervants´ agreements, Collective Agreements Act or the Act on Collective Civil-Servant Agreements. Suits at the Labour Court are regularly brought by and against the parties to the collective agreement in question which are employers' and employees' organizations. There are rarely any individual complainants. If so, an individual complainant shall indicate his/her name and the contact information of his/her attorney.

11. What data do you collect in relation to businesses?

Answer: The name of the business.

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?

    (Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer: See **Answer**s 10 and 11.

Basic data on the matters entered into the court records, such as the names of the parties and the decisions in the matters are public record information which are kept permanently. This has not been affected by the GDPR.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer: The staff has access to all information with the exception of some administrative data.

14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer: The principle of publicity of the court proceedings is one of the leading principles in the Finnish procedural law. This applies to oral hearings and trial documents. However, according to the laws concerning the publicity in court proceedings in general courts and in administrative courts it is possible to restrict the publicity in certain circumstances.

Also the judgment of the court is public unless the court orders it to be kept secret for some parts. Parties have the right of access even to confidential judgments.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer: The court has a designated data protection officer and the staff has been briefed regarding the principles of GDPR. In the future there will be more training on the matter for the (part-time) members as well.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer: No. These cases are handled by the district courts.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer: No. According to the Act on the Publicity of Court Proceedings in General Courts (370/2007) a trial document shall be kept secret to the extent that it contains information regarding the deliberations of the court. This includes the judge's notes.

18. Has GDPR impacted on the format in which your judgments are published?

Answer: All judgments are published on the internet. The published versions don't contain any names of persons or businesses.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer: See **Answer** 18.

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer: We deliver statistical data on the number of cases received and solved by the Labour Court to the Ministry of Justice every year for budget drafting reasons.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer: No.

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer: No.

GERMANY

REPORTERS:
JUDGE REGINE WINTER, FEDERAL LABOUR COURT OF GERMANY
JUDGE CLAUDIA WEMHEUER, FEDERAL LABOUR COURT OF GERMANY

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:
Formalities associated with proceedings before German courts, including labour courts, can be concluded by electronic means. The Code of Civil Procedure (Zivilprozessordnung, ZPO) provides in section 130a para. 1 ("Electronic document") that preparatory written pleadings and their annexes, petitions of and declarations by the parties as well as information, testimonies, reports, and declarations by third parties may be submitted to the court as electronic documents. The electronic document must be suitable for processing by the court. The electronic document must be provided with a qualified electronic signature of the responsible person or be signed by the responsible person and submitted by a secure means of transmission. Secure means of transmission are described in section 130a para. 4 ZPO, e.g. the electronic attorney mailbox (section 31 a of the Bundesrechtsanwaltsordnung/ Federal Lawyers' Act).

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer:
The court must, in principle, forward all the pleadings of one party to the other. They may be transmitted by electronic means. Also in cases where formal service (e.g. service against return confirmation of receipt) is required by law (e.g. for the submission of complaint/ application), this document may be served as electronic copy. It has to be a certified electronic copy. The copy is to be furnished with the qualified digital signature of the records clerk of the court registry (section 169 para. 4 ZPO).

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:
In Germany, digitalisation has started in the courts, including the labour courts. The process has not yet been completed and the individual courts have made different degrees of progress. It is intended to equip and train the courts accordingly.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:
New rules have been introduced in the court rules of procedure (such as the ZPO) to allow the digital era in the courts.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings.

Answer:
Proceedings before our court are not digitally recorded.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:
Generally, recording the proceedings is not allowed.
Especially, audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content shall be inadmissible (section 169 para. 1 sentence 2 GVG). For pronouncement of decisions - not for the court proceedings/the hearing itself - of the Federal Labour Court and other Federal Courts these courts may admit audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content (since the EMöGG [Act of 2017 pertaining Extension of Media Publicity in Court Proceedings] came into force). Furthermore, audio recordings of the hearing, including of the pronouncement of judgments and rulings, may be permitted by the court for academic and historical purposes if the proceedings are of outstanding historical significance for the Federal Republic of Germany (section 169 para. 2 GVG).

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:
The Federal Labour Court, as the court of appeal on a point of law (Revision), does not collect any evidence. As far as evidence is to be collected in the First-instance Labour Court or in the Land Labour Court (second instance) the courtrooms are currently - to our knowledge - not yet equipped with computer, audio-visual etc. to facilitate the introduction of evidence in digital formats. Within the framework of digitalisation in the courts it is intended to equip and train the courts accordingly.

8. Are you permitted to take evidence by Skype or through similar platforms?
   iii. If so, in what circumstances can evidence be taken by this mode

Answer:
In Germany it is permitted to take evidence by means of a video conference. The requirements of section 128a ZPO apply.

Section 128a
Hearing for oral argument using image and sound transmission
(1) The court may permit the parties, their attorneys-in-fact and advisers, upon their filing a corresponding application or ex officio, to stay at another location in the course of a hearing for oral argument, and to take actions in the proceedings from there. In this event, the images and sound of the hearing shall be broadcast in real time to this location and to the courtroom.
(2) The court may permit a witness, an expert, or a party to the dispute, upon a corresponding application having been filed, to stay at another location in the course of an examination. The images and sound of the examination shall be broadcast in real time to this location and to the courtroom. Should permission have been granted, pursuant to subsection (1), first sentence, for parties, attorneys-in-fact and advisers to stay at a different location, the images and sound of the examination shall be broadcast also to that location.
(3) The broadcast images and sound will not be recorded. Decisions given pursuant to subsection (1), first sentence, and subsection (2), first sentence, are incontestable.

   v. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:
extremely rare

   vi. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:
We do not have any empirical information

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:
As in the courts in Germany the process of digitalisation has just started (cf. **Answer** to question 3), there are - to our knowledge - no findings on this question yet.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer:
From all parties to the proceedings we require: The designation of the party (name and address) and the designation of the party representative(s)/attorney(s) (name and address).
“Mr”/”Mrs” is noted for the correspondence.
Only this personal data is stored in the specialized digital application.
Where an application for legal aid is made, data on income, assets and family situation - as far as relevant - shall be collected.
At the end of the proceedings, the account number of the losing party is partly required for the settlement of the court fees, in particular in the case of payment by instalments.
Whether other personal information is required / given within the scope of the burden of proof depends on the subject matter of the dispute.

11. What data do you collect in relation to businesses?

Answer:
Also the designation of the party (name and address) and the designation of the party representative(s)/attorney(s) (name and address). In the case of a legal person their legal representative(s) must also be stated. We compare the information about the designation of the party and about the legal representative(s) online with the official trade register.
Whether other personal information is required depends on the subject matter of the dispute.

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant’s personal data? and (ii) a corporate litigant’s business data?

    (Where applicable) Has your approach to the collection, retention and/or processing of parties’ personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer:
The files arising in proceedings before the Federal Labour Court (and thus also the personal data contained therein) shall remain in the Federal Labour Court for 40 years if they contain votes or instruments permitting enforcement, and otherwise for 10 years. At the end of the respective

retention period, the files will be destroyed. Some basic data about the proceedings (including designation of the party and the designation of the party representative(s)/attorney(s) are deleted after another 30 years. The approach to the collection, retention and/or processing of parties' personal data has been revised following the commencement of the GDPR. A data protection guideline has been developed for the court. The process is not yet finished; currently the forms on notification and information obligations are being revised.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:
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14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:
The designation of the party with name, address and, if applicable, legal representative(s) is indicated in the introductory part of the application. The application is delivered to the other party with this information and with other personal information which has been given in the application dependent on the subject matter of the dispute.
Court decisions shall be anonymised before publication.
Access to the files is provided to the parties to the proceedings only in court under supervision. Representatives/Attorneys of the parties to the proceedings, who are generally subject to special secrecy and obligations, may obtain a file for review in their law firm.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:
The court provided information, teachings and training sessions for all employees of the court and the members; partly optional, partly mandatory. For many years now, all employees and members of the court have been instructed with regard to the existing national data protection obligations. The already previously used declarations of commitment on data protection are currently being revised in relation to the application of GDPR principles.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:
Yes, the labour court is competent to hear such actions.
Remedy by prohibiting further use of the data and/or remedy by damages.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:
A record is to be prepared of the hearing and of all evidence taken (section 159 para. 1 ZPO). The parties shall receive a copy. Further details on the content of the record are regulated by section 160 ZPO. Additional (own) notes of the judge are not part of the files of the proceedings. The parties have no access to them. In court, notes and documents must be regularly locked away and destroyed after use.

18. Has GDPR impacted on the format in which your judgments are published?

Answer:
No impact, as our privacy policy was also previously strict. Court decisions shall be anonymised before publication. This was already the case before the GDPR.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:
Yes, the decisions of the Federal Labour Court are published in full. They shall be anonymised before publication (take off parties' and witnesses' personal data).

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer:
Such data is not collected in labour court proceedings in Germany.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer: No collection, no transfer of such data, therefore no connection/combination of such data.

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer: No collection, no transfer of such data, therefore no interrogation by artificial intelligence.

HUNGARY

REPORTERS:
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TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:

Hungarian statutory law on the use of means of electronic communication is based on two acts:

- Act no. CCXXII of 2015 on the General Rules for Trust Services and Electronic Transactions (hereinafter: E-government Act) and in its implementing decrees provide a *general regulation* on the electronic communication and administration of all national public entities including the judiciary, in compliance with Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (eIDAS Regulation).
- Act no. CXXX of 2016 on the Code of Civil Procedure (hereinafter: CCP) enshrines *special rules* on electronic communication in court lawsuits (including labour law disputes). The set of rules concerning electronic communication under the CCP is also applicable under Act no. I of 2017 on the Code of Administrative Litigation (hereinafter: CAL) governing, inter alia, the procedure of employment disputes in the field of public service.

The combined reading of the above referred acts triggers many interpretation and application difficulties and challenges in the daily judicial practice.

In Hungarian judicial proceedings, electronic communication is *mandatory* for the following range of clients: economic operators, the State, municipal governments, budgetary agencies, the public prosecutor, notaries, public sector bodies, other administrative authorities and the legal counsels of clients (E-government Act, sec. 9). They are required to open specific secured communication interfaces to receive and submit procedural documents (E-government Act, sec. 10): “client gates” for natural persons, “business gates” for business entities and legal counsels and “administrative gates” for public bodies. Other forms of electronic communication (e.g. e-mail, Viber) are excluded. Electronic submissions are required to be drafted

on electronic forms edited and published by the National Office for the Judiciary[2] (available on the courts' central website). Helpdesk service and user guides are also available on the courts' central website to facilitate the electronic communication of parties and legal representatives.

The party, if not required to maintain electronic communication as indicated above, or his representative who does not qualify as legal counsel (e.g. a natural person's guardian) has the *option* to submit the statement of claim, as well as all other submissions and their enclosures by way of electronic means in the manner specified in the E-government Act [CCP, sec. 605(1)]. If they use this option, electronic communication can exclusively take place by means of "client gates" as well. In this case the party is required to maintain electronic communication throughout the whole proceedings. Returning to paper-based communication is possible only on one occasion during the proceedings, under very limited circumstances [CCP, sec. 605(3), 606].

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer:

In Hungary the *court itself serves* the received documents on the other party. Documents are transmitted to other parties by electronic means if they are obliged to use such means or opted for the optional use of electronic communication [CCP, sec. 605(3), 608(1)]. The court can use only secured communication interfaces as referred to in the answer given under Question 1.

The parties are statutorily obliged to collaborate and cooperate to facilitate the concentration of court proceedings [CCP, sec. 4(1)]. Accordingly, in the course of the proceedings, the *court may instruct the party* to send his submissions directly to the other party, indicating this fact in the submission to be lodged with the court. In this case, the court is required to follow up at the subsequent hearing whether the counterparty has actually received the submissions in due time [CCP, sec. 110(2)]. Direct communication between the parties may take place in any form (e-mail, ordinary mail, social media etc.).

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:

The courts' employees are provided with the appropriate technology to process the

2 The National Office for the Judiciary, as the central administrative body of the Hungarian judiciary, is responsible for the management of the administration of the court system with high degree of independence from the other branches of state power.

parties' electronic submissions, but during the hearing of a case judges usually work with paper-based files and printed documentation. *All court rooms are equipped* with desktop computers providing judges, in the course of the hearing, with direct access to (i) documents uploaded to the central and local court network including the electronic documents of the current proceedings, as well as (ii) electronic databases of pieces of legislation, court decisions and commentaries and (iii) the "Court Benchbook" (containing templates for frequently issued decisions; see in more detail the answer given under Question 4) and (iv) the Internet (with the exception of social media sites).

Last year every single judge received a mobile device (high quality notebook and/or tablet, e-book reader) in the frame of the Digital Courts Project of the National Office for the Judiciary (see in more detail the answer given under Question 4). A number of *court secretaries* (a preliminary status before being appointed to be a judge) having autonomous authority to deal with specific types of cases (e. g. misdemeanour cases, civil enforcement cases) are also provided with notebooks.

About the *equipment of the courtrooms* see in more detail the answer given under Question 7.

Court employees are *continuously provided with local trainings* in the use of the provided hardware and the available software by the courts' IT staff. Both e-learning materials (see in more detail the answer given under Question 4) and live courses are frequently provided. *Electronic communication liaisons* are appointed at each court to consult with on questions related to the technical and procedural aspects of electronic communication. The online available *IT Help-Desk* provides support during working time for individual problems and questions.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:

The previous Hungarian Civil Procedural Code (Act no. III of 1952 on the Code of Civil Procedure; hereinafter: the 1952 CCP) had been amended many times in response to new developments.

The *first type of cases* where electronic communication became optional, later on mandatory, was the registration of companies. The appropriate amendments of law and the establishment of technical conditions took place between 1 January 2005 and 30 September 2006. Between 1 January 2013 and 1 January 2015, electronic communication had become gradually optionally available in all instances of civil, commercial, administrative and labour cases. From 1 January 2016, parties having legal counsels as well as business entities and public bodies shall *mandatorily use electronic communication* in all civil, commercial, administrative and labour cases.

The CCP, entered into force on 1 January 2018, *did not alter the above described personal scope of use of electronic communication* (see in more detail the answer given under Question 1), however, the new code and the simultaneous amendment of the E-government Act provided for a *large number of new procedural*

requirements to enhance the security and reliability of electronic communication and ensured compliance with the eIDAS Regulation.

The *"Digital Courts Project"* introduced by the National Office for the Judiciary is one of the largest national projects of the judiciary. The aim of the project is to meet the increasing challenges of the age of digitalisation within the judiciary both regarding clients and judicial administration.

The project embraces an increasing number of digital amenities that serve the easy, up-to-date and convenient litigation of *clients*, such as:

- *E-administration services* (available on the courts' central website):
  - *E-complaint*: clients may submit their complaints by electronic way using their client gate (see the answer given under Question 1).
  - *Electronic information and warning system*: designed to send information for the parties and their representatives about the status of their case and to provide them with some specific procedural acts at their request.
  - *Electronic calculator of the duration of proceedings*: the calculator indicates the estimated duration of proceedings in a specific subject matter before a specific court, based on judicial statistical data.
  - *Electronic payment service*: the parties may perform their payment duties for the courts (e.g. procedure fees) through a secure electronic interface.
- *Publication of anonymous judicial decisions supplemented with a smart browsing system* (under construction). Anonymous decisions are already published on the courts' central website (see in more detail the answer given under Question 19), but the current database is very difficult to use and does not provide means to carry out efficient searches to find the relevant decisions. An upgraded system of anonymisation and a modernised case-law database are under construction.
- *Introduction of an E-folder* (under construction). E-folders will serve as the ultimate means for the complete digitalisation of the documentation of the cases. The whole case file will be accessible online at any time for the clients and the judges. There will be no need for personal appearance to exercise the right to access the case file.
- *Introduction of the Via Video system* (see the answer given under Question 7).

The *daily work of judges and judicial staff* is supported by the following developments implemented in the framework of the Digital Courts Project:

- *Provision of modern IT devices*: based on the judges' own choice, a total of 2 424 mobile devices (tablets, notebooks, e-book readers) have been purchased and provided for them. Working on these devices grants a large flexibility for judges to determine the place and time of their work. (Working from home is, as a general rule, permitted for every judge after one year of service and occasionally permitted for judicial staff members as well.) Old, tape-based sound recorders were also replaced by high quality digital recorders last year.
- In these months, an upgraded version of the O*ffice software package* is to be installed to all the IT means of judges. Appropriate softwares and the *secure court network* ensure the *remote availability* of the judges' personal account

and database and provide all judges with access to the case files uploaded to the network.

- The *E-Folder* is going to ensure even more flexibility for judges regarding their work. Appropriate devices will be provided in order to enable judges to smartly process their procedural documents without printing them.
- *Speech-to-text softwares* based on the special vocabulary of judicial work can make the typing of decisions and minutes considerably faster. (The introduction of speech-to-text softwares is currently in a test phase and, due to the limited number of available licences, such softwares are not ensured for all judges.)
- *All public electronic registers* are directly available for judges (see in more detail the answer given under Question 13).
- *Unified e-learning portal ("COOSPACE")*. The portal, accessible for all judges and staff members, contains a large amount of e-learning materials and electronically available information related to past live courses (ppt, podcast). The portal provides the opportunity to take exams at the end of certain e-learning courses.
- *Court Benchbook.* The Benchbook provides a high number of frequently used templates for judicial decisions in a number of different formats (to print, to edit, to edit with speech-to-text software).

In cooperation with the Ministry of Foreign Affairs and Trade, the set of digital developments embraced by the Digital Courts Project has also become a commodity for export and as such it has been sold to Srí Lanka.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings?

Answer:

In labour law litigation, the courts hearing labour cases at first and second instance[3] use no court reporter, instead, the president of the panel makes a *sound recording* simultaneously with the procedural steps so as to subsequently produce written minutes. Sound is recorded by high quality voice recorders. Minutes are typed by the administrative staff within 8 working days from the date of the hearing and are placed in the file in a printed version, and are served on the defaulting parties (and in general on the parties who were present at the hearing as well).

3 The Hungarian judiciary includes four levels:
1st level: district courts (110) + administrative and labour courts (20)
2nd level: high courts (20)
3rd level: regional appellate courts (5) (playing no role in labour law disputes)
4th level: Curia of Hungary (1)
In Hungary, labour law disputes are heard and determined at first instance by one of the 20 administrative and labour courts, located in each county seat and in the capital. *Appeals against their decisions can be lodged with the high courts, having specialised labour law panels, located similarly in each county and in the capital. A petition for judicial review against the final decision of a high court can be submitted to the Curia of Hungary, which is the single highest judicial forum in Hungary.*

By contrast, the Curia of Hungary[4], dealing with petitions for judicial review (means of extraordinary remedy that can be lodged against final judgements delivered by second instance courts) in labour cases, still employs court reporters typing the minutes of the hearing simultaneously [CCP, sec. 159(1)-(3), 161(1)].

On the request of either of the parties, during the hearing when arguing the merits of the case[5] and before the commencement of any procedural act, the court – if the necessary technical arrangements are available – may order the "*single sequence recording of proceedings*", containing visual images and sound alike. The court may order single sequence recording of its own motion as well [CCP, sec. 159(5)]. If the proceedings are recorded by way of single sequence recording, the parties are notified on the availability of the record to hear and see it. They are entitled to copy the record according to the general rules on copying the hard copy documents of the proceedings [CCP, sec. 159(8)]. In case of single sequence recording, the court issues a written extract of the record (with reduced content as specified by the CCP) instead of producing written minutes [CCP, sec. 159(5)].

As a result of the introduction of *speech-to-text softwares*, a number of judges may also use these softwares to keep the minutes of the proceedings. Voice files recorded at the hearings by such means can be put into writing subsequently, without any need for the collaboration of the administrative staff. Recently, it has also become possible to keep the minutes by way of using intelligent minutes templates (saved in the "Court Benchbook" referred to in the answer given under Question 3), which can be filled during the hearing, following the voice instructions of the judge dictating the record. Speech-to-text softwares are still under development and are not yet available to all judges.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:

No, the parties and other participants are *not permitted* to record the proceedings under the CCP. As an exception, *the representative of a media content provider* defined in Act no. CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content has to be allowed to make – in the manner prescribed by the court – audio-visual recordings of public hearings, for the purpose of informing the public. The CCP regulates, in a detailed manner, which participants of the proceedings can be recorded by media content providers. It is the court's responsibility to enforce the CCP's relevant provisions and to provide for the protection of the personality rights of the persons concerned [CCP, sec. 232)].

4 See the previous footnote.

5 The CCP is based on a divided (three-stage) procedural structure within the first instance procedure. After the "stage of bringing action" (where the plaintiff submits the statement of claim and the court decides on the admissibility thereof) and the "stage of case initiation" (where the parties define and finalise the framework of the dispute), the "stage of hearing as to merits" is the stage where the court takes evidence and decides on the merits of the case.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:

Hungarian courtrooms are equipped with *desktop computers* as indicated in the answer given under Question 3. These devices make it possible to introduce evidence presented by the parties in digital formats, e.g. on a CD/DVD or on a USB flash drive (e.g. a picture or a video or audio record). By this way, the parties can make their statements related to the current topics and relevant questions of the litigation and can examine the evidence produced immediately, which can ensure the success of the evidence taking process. The files to be submitted electronically by those parties who are obliged to maintain electronic communication with the court (see the answer given under Question 1) are subject to a size limitation (a maximum of 300 MB). If an electronic document's size exceeds the aforementioned limit, the party has to submit it by other means, e.g. on a CD/DVD or on a USB flash drive.

The CCP allows for the possibility of hearing the parties and other persons involved in the action as well as witnesses and experts through *electronic communications networks*, and of conducting inspections through such networks under circumstances specified by law (in detail: CCP, sec. 622 to 627).

For this purpose, the National Office for the Judiciary launched the "*Via Video Project*" in September 2018. Via Video is designed to introduce a closed-circuit television (CCTV) system between different courtrooms within the country, but it is also suitable for cross-border videoconferencing. The system enables the courts to carry out remote interviews and to produce video and sound recordings in the courtrooms.

Currently, there are more than 72 digital endpoints with a desktop computer and a control panel in Hungary's various courtrooms. Till the end of 2019 there will be 112 new digital endpoints, which means in every Hungarian court there will be at least one courtroom where this facility is available. There is a display monitor on the wall and a document camera which make it possible to show all the documents both in the courtroom in the premises of the court seized with the case and in the remote courtroom in which the witnesses and other persons to be heard appear. Some prisons are also equipped with such endpoints in order to reduce the costs and security risks arising from the transportation of detained persons to be heard by the courts. This technology guarantees the safety of minors, juveniles and protected persons, since witnesses do not need to be present in the same room with the accused persons in criminal cases. As regards civil cases, this solution entails the reduction of the costs of proceedings, because witnesses do not have to travel hundreds of kilometers.

The infrastructure of the Via Video system is fitted for the performance of taking of evidence according to Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (hereinafter: Evidence Regulation) and the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters outside the European Union.

Videoconferences can also be held through this system. The Internet connection is provided almost free of charge, which contributes to the reduction of procedural costs.

The National Office for the Judiciary endeavors to train Hungarian judges in order to make them familiar with this technical novelty. The number of remote auditions increased from 18 to 579 in the period from September 2018 to May 2019. The number of judges carrying out remote interviews rose from 10 to 206, while the number of auditioned persons grew from 20 to 625 during the same period. By the end of May 2019 2115 remote interviews have been carried out and in more than 50 cases foreign judicial bodies have been involved.

8. Are you permitted to take evidence by Skype or through similar platforms?

i. If so, in what circumstances can evidence be taken by this mode?

Answer:

The CCP does not refer to such way of taking of evidence. Having regard to the mandatory nature of procedural law and to the fact that evidence taking can be carried out exclusively through methods specified by law, it should be concluded that remote hearing and inspection methods other than the one regulated by the CCP (through CCTV) cannot be applied.

At national level, the provisions of the CCP on taking of evidence by way of CCTV and through the infrastructure of the Via Video system provide an excellent and safe framework to take evidence remotely. Furthermore, the CCP lays down that if the performance of the taking of evidence during the hearing would entail considerable hardship or unreasonably higher costs, it may be carried out by a delegated judge or by way of a requested court [CCP, sec. 277(4), 280, 282, 283].

At EU level, all Member States are supposed to have put in place arrangements to comply with the *Evidence Regulation*. This means that the system of requested courts and direct taking of evidence by videoconferencing should be supposed to actually function. Nevertheless, according to our experiences, cross-border taking of evidence by videoconferencing fails at times due to technical and communication obstacles.

i. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:

See the previous **Answer**.

ii. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:

See the previous **Answer**.

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:

The *Digital Courts Project*, as described in the answer given under Question 4, is currently considered as one of the top priorities of the court administration.

The *EU Justice Scoreboard*, published by the European Commission every year (the latest edition was released on 20 May 2019) in order to assess the functioning of national judiciaries based on objective indicators, ranks the Hungarian judiciary first among the Member States (along with four other Member States) in terms of availability of electronic means (Source: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en).

The digitalization of the functioning of the judiciary is a long and complex process, including the fields described in the answer given under Question 4. Among the practical activities referred to therein, digitalization has lately been an intensely researched and discussed topic addressed by the Hungarian Academy of Justice in the framework of recently organized international judicial conferences and seminars. The most important advantages to be achieved by the digitalization of judicial services and administration are the followings:

- easier and non-stop access to files and information materials for the clients and judges;
- high standard of data security, and the security of service and payment methods;
- minimalization of travel costs;
- environmentally sound way of the functioning of the courts (by saving paper and reducing travel needs);
- flexibilization of the judges' work, assisting them in striking a balance between work and private life;
- raising the efficiency of the utilization of human workforce by saving working time for the typing personnel and the judges.

The Hungarian judiciary has made great efforts in the field of the digitalization of the courts, but there are still many steps to be taken. Judges and clients have to learn how to use the system safely and routinely. Trainings are provided for the judges and court staff to make them familiar with the system's functions. Clients have to gain practice and trust related to the course of the proceedings as well.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer:

Hungarian procedural law specifies the *identification data of natural person* parties that may be required to be provided by them. In their statement of claim, natural persons have to indicate their place of residence (or habitual residence in the absence thereof), address for service of process (if other than the place of residence or habitual residence), place and date of birth, mother's name, name and address for service of process of the legal representative if lacking procedural legal capacity. In their claim, among other mandatory elements, natural persons have to indicate the defendant's identification data available to them, meaning at least the latter's residence or registered office as well [CCP, sec. 7(3)].

If a natural person acts without legal representative, he is required to use a *standard form for submitting the statement of claim* provided for by law and made available on the courts' central website [CCP, sec. 246(1)]. This form requires the party to provide the mandatory identification data indicated above.

11. What data do you collect in relation to businesses?

Answer:

Hungarian procedural law specifies *the identification data which have to be indicated by business entity parties* as follows: the registered office of the business entity, address for service of process (if other than the registered office), registration authority and registration number, tax number, name and address for service of process of the legal counsel or corporate representative for legal disputes [CCP, sec. 7(2)].

If any party (irrespective of being a natural person or a business entity) has a *legal representative*, the mandatory data are the followings: name, registered office, phone number and electronic mail address of the legal counsel, including the name of the legal counsel designated to receive official documents if there are two or more legal counsels [CCP, sec. 177(1)(c)].

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?
(Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer:

According to the CCP, the court shall be allowed to process (retain) such personal data after the final conclusion of the proceedings exclusively *for the purpose of the execution of its final decision*, *for monitoring the implementation* of its final decision or *for any appeal* or *other legal function* initiated in connection with its final decision,

and may disclose them only to another body or person authorized for the processing of such personal data [CCP, sec. 162(6)].

Under Hungarian procedural law, the processing of the personal data of the parties and other participants to the proceedings takes place in the framework of the *processing of the case file containing such personal data*. The files are stored both in printed and electronic format. These formats shall be processed according to Order no. 17/2014 (of 23 December 2014) of the President of the National Office for the Judiciary on the Unified Processing of Judicial Documents (hereinafter: Processing of Judicial Documents Order) and Act no. LVI of 1995 on Public Records (hereinafter: PR Act) after the conclusion of the proceedings.

Pursuant to the Processing of Judicial Documents Order, courts are required to preserve the integrity of the records and their original order and to preserve the files in their possession for 15 years subsequent to the conclusion of the proceedings. After 15 years, "*files of lasting value*" shall be transferred to the competent public records. A file is considered as being of lasting value provided that it is essential for the research, knowledge and understanding of the historical past in terms of economic, social, political, legal, national defense, national security, scientific, cultural, technical or other aspects. After 15 years, *files without lasting value* are scrapped and destructed (Processing of Judicial Documents Order, sec. 191, 199 to 202/D).

In the case of *electronic records*, courts may use only such softwares that comply with the requirements specified in a separate piece of legislation and are certified. Electronic data are required to be archived or, if they had been submitted on data carriers, their safe and permanent preservation has to be secured. The scrapping of electronic files and documents is done without physical deletion, with the indication of the fact of scrapping. After scrapping, electronic records and documents must be irrevocably deleted from the file [Processing of Judicial Documents Order, sec. 192(7), 202(1)(3)]. Electronic records considered as being of lasting value cannot be scrapped, they have to be transferred, after 15 years, to the public records according to the rules of the relevant ministerial decree on the requirements of the transfer and storage of electronic public records (Human Resources Ministerial Decree no. 34/2016.).

The above described approach to the retention and/or processing of the parties' personal data *has not been revised* following the commencement of the GDPR. It shall be referred that, in civil lawsuits (including labour law disputes) the personal data of the individual litigant and the business data of the corporate litigation clients are not public either during the proceedings or after the conclusion of the proceedings.

The GDPR, as an EU regulation, directly applies to the data processing activities of the Hungarian judiciary as well. Hungarian *national law has been brought into compliance* with the GDPR in two legislative steps:

- in July 2018, Act no. CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (considered as the general act governing data processing activities; hereinafter: Freedom of Information Act) was amended to meet the requirements of the GDPR;

- in April 2019, a number of sectoral acts concerning data protection were appropriately amended as well, including Act no. I of 2012 on the Labour Code (hereinafter: LC).

These amendments have not affected the CCP, therefore the scope of data mandatorily collected and the duration of their retention by the courts subsequent to the conclusion of court proceedings have not been altered. The lawfulness of data processing is based on Article 6(1)(e) of the GDPR ("processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller") or, in case of sensitive data, on Article 9(2)(f) of the GDPR ("processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity").

Recital 20 in the preamble to the GDPR lays down that Member State law could specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including decision-making. It should be possible to entrust supervision of such data processing operations to specific bodies within the judicial system of the Member State, which should, in particular, ensure compliance with the rules of the Regulation, enhance awareness among members of the judiciary of their obligations under the Regulation and handle complaints in relation to such data processing operations. Therefore, there are a few novel legal instruments and administrative arrangements supporting the direct application of the GDPR within the judiciary.

- The National Office for the Judiciary issued a recommendation (no. 6/2018) for the courts on a *model policy on the operation of security cameras* in the court buildings with respect to the data processing requirements included in the GDPR.
- The National Office for the Judiciary issued an order (no. 5/2019) on *data protection officers* in compliance with Article 39 of the GDPR and the corresponding provisions of the Freedom of Information Act (Freedom of Information Act, sec. 25/M), on the appointment of *a person responsible for the implementation of the data protection policy* of the court at each court, as well as on the detailed rules of the adjudication of *data protection objections* (see the **Answer** given under Question 14).
- A new chapter was included into the Freedom of Information Act on "*data protection objection*" as a remedy for data protection irregularities committed in the course of the courts' adjudicating activities (see in detail the **Answer** given under Question 14).

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:

Apart from the data required for the identification of the party (see the **Answer**s given under Questions 10 and 11), the *court is not entitled to request* the party to verify any data that was published by the body affected under obligation prescribed by law, or available in a public register (such as register of companies, land register etc.) (CCP, sec. 112; Order no. 5/2019 of the President of the National Office for the Judiciary).

In labour law cases, the *court does not make any inquiry on the personal data* of the parties or other facts of the case on its own motion, with some narrow exceptions (e.g. establishing the lapse of a claim [LC, sec. 286(3)], lack of procedural legal capacity of the party [CCP, sec. 35(1)], missing the deadline for bringing an action [CCP, sec. 176(1)(i)]). As a main rule, presenting material facts and making available evidence to corroborate such facts is the task of the parties [CCP, sec. 4(2)].

If the party or the legal representative is required to maintain or has opted for electronic communication with the court (see in detail the **Answer** given under Question 1), the court has access to the *registered administrative arrangements of the clients* (client gate, business gate, administrative gate). If electronic communication is mandatory, the courts have to identify the clients in the system and serve all judicial documents on the party electronically already on the occasion of first contact with the client [E-government Act, sec. 14; CCP, sec. 605(1)]. A natural person may also make a general statement that he intends to use electronic communication with public bodies counting as electronic service providers (including the courts). Before the first and every subsequent contact with a natural person client, the court is required to check on its own motion whether the client has made such a statement, and if so, the court is required to serve all the documents on him through the client gate (E-government Act, sec. 15-17).

14. Is data of this nature made available to other parties to the proceedings?
If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:

As a main rule under the CCP, the court takes measures to *enable the parties to have access to all requests submitted during the proceedings*, including all documents, evidence presented to the court, hence, the data submitted by the parties, irrespective of their nature, are available to the parties without any restriction [CCP, sec. 110(2)]. Documents containing classified information, business secrets, privileged information or other secrets provided for by an act of law can be accessed by the counterparty on a restricted basis specified by law (CCP, sec. 163).

The CCP determines the preconditions, purpose and duration of the processing of personal data by the courts: the court is authorized to process personal data obtained in connection with a legal action until the purpose of data processing is

achieved, at the latest until the documents of the underlying proceedings are scrapped or archived in public records (see the **Answer** given under Question 12). The court shall be allowed to process such personal data after the final conclusion of the proceedings exclusively for the purpose of the execution of its final decision, for monitoring the implementation of its final decision or for any appeal or other legal function initiated in connection with its final decision, and may disclose them only to another body or person authorized for the processing of such personal data [CCP, sec. 162(6)].

In compliance with the GDPR (see the **Answer** given under Question 12), the *National Authority for Data Protection* (the Hungarian national supervisory authority as stipulated under Articles 51 to 59 of the GDPR) *has no competence* to supervise the courts' adjudicating activities in order to safeguard judicial independence. Having regard to the above, the Freedom of Information Act introduced a new instrument: "*data protection objection*" is designed to remedy data processing irregularities committed by the courts to the detriment of their clients. Such objection has to be lodged with the court of the main proceedings in writing, and addressed to the court having competence to examine the objection. The objection may be lodged by the plaintiff, the defendant and other parties to the proceedings – in particular the aggrieved party, the private party, the witness and the expert, and any other person who is able to prove his legal interest presumptively at the time of lodging the objection. Based on the objection, the court examines whether the judge, lay assessor or judicial staff acted in compliance with the relevant legal provisions – including the GDPR – on the protection of personal data in their data processing activities. In the main proceedings, if the court finds for the objection, it takes appropriate measures to mitigate the consequences of the infringement or to eliminate the imminent danger of the infringement, and simultaneously notifies the person lodging the objection thereof and also of the measures taken, and advises such person that if he wishes to maintain the objection in spite of the measures taken he may do so by means of a statement submitted within eight days of the receipt of the court's notice. If the court did not take appropriate measures in the main proceedings or if the data subject submitted a statement, the court seized in the main proceedings has to forward the relevant documents to the court having jurisdiction to hear and decide on the objection, where the final decision on the matter is to be made (Freedom of Information Act, sec. 71/A to 71/C; Order no. 6/2019 of the President of the National Office for the Judiciary).

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:

Yes, the majority of administrative and labour court judges have participated in trainings in relation to the application of the general principles of the GDPR in the framework of trainings organised by the Hungarian Academy of Justice[6] and by the regional administrative and labour colleges.[7]

6 The Hungarian Academy of Justice is the central training institution of the Hungarian judiciary. It is an organisational unit within and operated by the National Office for the Judiciary.

7 There are eight regional administrative and labour colleges which comprise all the administrative and labour court judges in each region of Hungary, in addition, each college is assisted by a liaison from the Curia of

In Hungary, the *Network of Judicial Advisors on European Law* comprises judges with special expertise in the field of EU law. The members of the Network are commissioned to assist their judge colleagues in addressing EU law issues in their judicial work, furthermore, they are expected to continuously develop the knowledge base of the Hungarian judiciary in the field of EU law. Judicial advisors have also attended courses and workshops in the framework of the Network's national trainings as well as the relevant courses of the EJTN and the European Academy of Law.

Nevertheless, the direct application of the GDPR in court proceedings and in the judicial administration raises a number of practical questions which cannot be **Answer**ed yet due to a lack of the relevant legal literature and case-law (e.g. how to implement in practice the data subjects' right to transparent information, rectification etc.). The challenge for the years ahead is to develop a consistent and sound judicial practice in respect of the application of the relevant EU piece of legislation.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?
If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:

An employee who suffers any damage from the violation of the GDPR shall have the right to claim *compensation by judicial process* from the employer in accordance with the provisions on liability for damages resulting from unlawful actions.

The *general rules on the sanctions for violations of personality rights* are regulated in Act no. V of 2013 on the Civil Code (hereinafter: CC), applicable in the context of employment with a few special rules (LC, sec. 9).

A person whose personality rights have been violated has the right to request
a) the delivery of a court ruling establishing that there has been an infringement of his rights;
b) the discontinuation of the infringement and that the perpetrator restrain from further infringement;
c) that the perpetrator make appropriate restitution and an appropriate public disclosure for restitution at his own expense;
d) the termination of the injurious situation and an „in integrum restitutio";
e) that the perpetrator surrender the financial advantage acquired by the infringement according to the principle of unjust enrichment [LC, sec. 9; CC, sec. 2:51(1)].

Any employee whose personality rights have been violated shall be entitled to a

Hungary. These regional colleges serve as a forum for professional discussions in order to ensure the unified and high quality administration of justice in the two fields of law concerned.

"grievance fee" for any non-material damage suffered. The court shall determine the amount of the fee in one sum, taking into account the gravity of the infringement, whether the latter was committed on one occasion or repeatedly, the perpetrator's degree of responsibility, as well as the impact of the infringement upon the person concerned and his environment. (LC, sec. 9; CC, sec. 2:52).

Any employee who suffers any (financial) damage from the violation of his personality rights by the employer shall have the right to claim compensation from the latter in accordance with the provisions on liability for damages resulting from unlawful actions (LC, sec. 9, 166 to 177).

The Freedom of Information Act introduces a further *set of sanctions applicable by the courts in cases of infringements of those rights of data subjects* that are guaranteed under national law or by the GDPR. The court may order
a) the cessation of the unlawful processing operations;
b) the restoration of the lawfulness of data processing; and/or
c) the performance of certain well-defined activities so as to ensure the exercise of the data subject's rights [Freedom of Information Act, sec. 23(5)].

In cases specified by law, the court may order to have its decision published [Freedom of Information Act, sec. 23(6)].

In such proceedings the burden of proof lies with the employer: the latter is required to prove that the impugned data processing has complied with the requirements of national law and the GDPR [Freedom of Information Act, sec. 23(2)].

Difficulties arise as to the application of the above sanctions from the fact that statutory law is not sufficiently clear about the question of which court shall have competence to adjudicate such claims. There are certain legal provisions that justify both the competence of civil courts (Freedom of Information Act, sec. 88) and the competence of administrative and labour courts (as a labour law case; CCP, sec. 508). No unified case-law could be established in this question so far.

In addition to bringing an action before the court, employees may assert their rights *before the National Authority for Data Protection*, if the employer prevents them from exercising their rights provided for in the Freedom of Information Act or in the GDPR, or refuses their request for exercising those rights [Freedom of Information Act, sec. 22(a)]. The Authority may proceed on its own motion as well [Freedom of Information Act, sec. 38(3)(a)(b)].

In its resolution adopted in administrative proceedings for data protection purposes, the Authority:
a) may directly apply the legal consequences provided for in the GDPR in cases of infringements related to specific processing operations;
b) in connection with other specific processing operations
ba) may establish the unlawful processing of personal data,
bb) may order the rectification of any personal data that is deemed inaccurate,
bc) may order the blocking, erasure or destruction of personal data processed unlawfully,
bd) may prohibit the unlawful processing of personal data,
be) may prohibit the cross-border transmission or disclosure of personal data,

bf) may order the information of the data subject, if it was refused by the data controller unlawfully, and
bg) may levy a fine ranging from 100 000 to 20 000 000 HUF (= cca. 330 to 66 000 EUR).

In some more severe cases specified by law, the Authority may order the publication of its resolution (Freedom of Information Act, sec. 61).

The resolution of the Authority may be contested within the system of administrative justice. These claims are handled at first instance by the administrative and labour courts as well, however, they are heard not in the framework of a labour law dispute (governed by the CCP), but as an administrative law dispute (governed by the CAL, see the **Answer** given under Question 1).

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:

No. The relevant ministerial decree on the courts' case management (Minister of Justice Decree no. 14/2002) lays down that the judges' notes are not accessible for the parties and their legal representatives [Decree, sec. 10(4)]. Before they exercise their right to access to the case file, the case management office of the court has to remove the notes from the file. However, if the judge takes notes, makes highlighting marks etc. directly on the documents included in the file, the parties cannot be prevented from seeing them. *The introduction of the E-folder (see the **Answer** given under Question 4) will be a suitable solution to address this problem:* the E-folder will be accessible for the parties at any time, and the judge will have the opportunity to take notes in a duplicate file, which will be guaranteed to be inaccessible for the parties.

18. Has GDPR impacted on the format in which your judgments are published?

Answer:

No. See in more detail the **Answer** given under Question 19.

19. Are your court's judgments published? If so, are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:

Yes, the Hungarian courts' case-law is published on the Internet with redaction of the parties' and witnesses' personal data. Act no. CLXI of 2011 on the Organisation and Administration of Courts (hereinafter: Courts Organisation Act) provides that the Curia of Hungary (Hungary's supreme judicial forum), the regional courts of appeal and the administrative and labour courts are required to publish their on-the-merits decisions in digital form in the Collection of Court Decisions. The latter is accessible on the courts' central website through the Register of Anonymous Decisions

(http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara).

The description of the published decision must include the name of the court, the field of law concerned, the year in which the decision was delivered, the decision's reference number as well as the legal provisions on the basis of which the decision was rendered by the court.

As a rule, all the parties' personal data must be deleted from the decisions ("anonymous decisions"), and the parties must be identified by referring to the role played by them in the proceedings. The same provisions are applicable to the witnesses' personal data. The law specifies which personal data shall not be deleted (e.g. the name of authorised legal representatives, the name of public bodies, the name of NGOs etc.) (Courts Organisation Act, sec. 163-166).

As regards the current development of the courts' case-law database see in more detail the **Answer** given under Question 4.

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?
If so, is this submitted in anonymised or pseudonymised format?

Answer:

No.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer:

See the previous **Answer**.

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer:

No.

LUXEMBOURG

REPORTER:
JUDGE JEAN-LUC PUTZ, FIRST JUDGE, DISTRICT COURT OF LUXEMBOURG

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:
For the moment, pre-hearing formalities in Labour law cannot be done by electronic means. Complaints (requête) must be deposited in writing at the Labour Court.
Some other jurisdictions[8] do admit a (pre-)transmission of requests by electronic mail, but still require a written and signed document at the date of the hearing.
A project on digitalisation of justice (Paperless justice) has been launched in 2014, but will take several more years before a tangible outcome can be expected.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer:

The initial claim is transmitted to the other parties by the Court (registered mail).
The notice of appeal is transmitted by a bailiff.
The evidence is provided by one party to another party. Between individual parties, there is no prohibition to transmit evidence by email. Between lawyers, the transmission by electronic mail is admissible[9].

[8] Especially the criminal indictment division (*chambre du conseil*).
[9] Art. 3.3.2. du Règlement intérieur du barreau de Luxembourg : « La notification d'actes de procédure, la communication de pièces, le courrier entre avocats peuvent se faire par courrier, par télécopieur, par porteur ou par message électronique. L'avocat destinataire de ces documents doit, dans les meilleurs délais, accuser réception des documents notifiés dans la mesure où l'avocat expéditeur le demande ».

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:
All members of the Court have a standard access to email services (Outlook), usual software to read and edit Office documents or PDF files, as well as some tools to display video and multimedia files.
There is no specific way (such as a secured central server) to store electronic claims, evidence or written pleadings. Every judge could store it on his own dedicated storage space (without any logging or indexation).
It happens in practice that some evidence is sent by email to the court clerks (*greffiers*) ; they would simply print it out and leave the files in their email Inbox.
There is no specific IT training for judges.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:
As mentioned in question 1, a project on digitalisation of justice is ongoing.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer:

No, the proceedings are not digitally recorded.
Some lawyers argue that such a recording should take place, as an essential element of the rights of defence.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:
No, participants in proceedings are not permitted to record them.
It was always considered that the making of such recordings is prohibited.
There are internal discussions in order to implement a specific text that would incriminate any kind of recording of the court hearings.
A person has been pursued because, as an accused (*inculpé*), he registered his hearing with the examining magistrate (*juge d'instruction)* [10].

[10] CSJ, Ch.c.C., 11 novembre 2015, op. cit..

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:
No, such equipment does not exist in Labour Courts.
At the District Court and the Court of Appeal, some courtrooms are equipped with screens to display videos or other digital documents.
If needed, such an equipment could be installed on request in any other courtroom. This however nearly never occurs in first instance Labour Courts.
The easiest solution would be that either the judge or the lawyer brings his own laptop.

8. Are you permitted to take evidence by Skype or through similar platforms?
   iv. If so, in what circumstances can evidence be taken by this mode

Answer:
It is not explicitly permitted nor prohibited.
In practice, it is never used for labour law cases.
Parties have to be physically present (or represented) for the hearing.
Witnesses are always invited to be personally present during the examination (*enquête*) ; if they have to travel, the parties must pay for the costs of travelling and accommodation.

vii. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:
Never used

viii. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:
N/A

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:

No, not at all.
At all levels of the procedure, digital technology could substantially facilitate access to justice, accelerate the procedure and reduce the costs. For the moment, everything is done by paper means, in multiples copies, often to be sent by registered mail.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer:
Only the very general identification data is required for a labour law claim or an appeal, i.e. family name, given name, professional occupation and domicile (Art. 145, 153, 585 NCPC). In practice, the date and place of birth are also registered.

11. What data do you collect in relation to businesses?

Answer:
The name, legal form, registered office and the registration number in the business register.

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?

    (Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer:

There are no clear rules. The GDPR is currently being implemented and the period of data retention will be clarified.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:

Never to my knowledge. If some decisions need to be taken at a higher level, IT staff is able to draw statistics from this data (e.g. on the number or duration of cases, etc.).

14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:
The other parties get a copy of the complaint (*requête*) and the final judgment, which contains the general personal data mentioned above.
No special safeguards are in place.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:
To my knowledge, there is no mandatory GDPR-training for judges or clerks. Optional training is offered to the judges at the French *Ecole Nationale de la Magistrature* and covers multiples subjects, including some training on data protection. Every judge is free, once a year, to decide if he wants to attend a training and to choose the subject.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:
Yes, the labour courts have jurisdiction for such cases and could order a cessation or grant damages. In practice, such cases are exceptional. Some cases had to deal with the admissibility of evidence (video recordings, screenshots, etc.).
In the past, some criminal files also dealt with situations such as an employer accessing the employee's emails.
Many aspects of data protection are no longer criminalized since the GDPR came into force; the national data protection authority (CNPD) can issue administrative fines and deal with employee's complaints.

I could mention, concerning public service, a recent incident where a candidate for an administrative job at the public prosecutor's office was not hired and accused the authorities to have asked questions based on information stored in a specific database for police and prosecution authorities, but not in the official judicial record (*casier judiciaire*). This case about an allegedly "secret" judicial record was doing the headlines for several days ; the problem was picked up by the parliamentary opposition. It lead to multiple discussions in the plenary session and the parliamentary commissions ; the political debate is likely to be ongoing after the summer break. It might lead to a general review of the judicial authorities' databases, the access rights and the purpose of data processing.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:
No, they are considered to be personal notes and nobody has access to them. Every judge decides on the way he takes and keeps his notes.

18. Has GDPR impacted on the format in which your judgments are published?

Answer:

Before the GDPR, it was already general practice that all judgments delivered to third parties are anonymized.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:

Unfortunately, case law is not systematically published by the judicial authorities. Only some decisions are accessible online (justice.lu), such as the decisions of the Court of Cassation and of the administrative courts.
Private initiatives try to grant a larger access to case law.
Any citizen can also ask for a copy of any decision or for a legal research on a specific subject.
Decisions published on the Internet or on request do not contain the parties' and witnesses' name and personal data. Even legal persons are normally anonymized, although this is not required by the GDPR.

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer:
No.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer:
N/A

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer:
No

NORWAY

REPORTERS:
JUDGE JAKOB WAHL, PRESIDENT, LABOUR COURT
JUDGE TRON LØKKEN SUNDET, VICE-PRESIDENT, LABOUR COURT
JUDGE ELI METTE JARBO, LABOUR COURT
PROF. STEIN EVJU, PROFESSOR OF LABOUR LAW, UNIVERSITY OF OSLO

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:

General remarks

For the purposes of this questionnaire, a distinction must be made between the general courts and the Labour Court. The general courts are the district courts (courts of first instance), the courts of appeal and the Supreme Court. With the exceptions set out below, the general courts have jurisdiction in any civil or criminal matter. A decision by the courts of lower instance may be appealed to the courts of appeal and the Supreme Court. The Labour Court has jurisdiction in disputes between parties to a collective agreement concerning the existence/validity and interpretation of collective agreement, and claims based on a collective agreement. Decisions by the Labour Court are as a main rule final and cannot be appealed, except on points of jurisdiction, which may be appealed to the Supreme Court.

The procedure before the general courts is governed by the Court Act and the Act relating to mediation and procedure in civil disputes (the Dispute Act). The procedure before the Labour Court is governed by the Labour Dispute Act, and this act refers to some, but not all, of the provisions in the Court Act and the Civil Procedure Act.

As a preliminary remark, the use of electronic means is being implemented in the general courts, but has yet to be implemented in the Labour Court.

An amendment in 2003 to The Court Act § 197a provides for further regulation on the use of digital communication in cases before the general courts. The Labour Dispute Act does not have a similar provision, but the travaux preparatoires to the Labour Dispute Act state that the relevant regulations in the Court Act on digital communication in the general courts also will be applied by the Labour Courts. This presumably also will include the relevant provisions in the Dispute Act on the use of electronic means in hearings. However, this is also a question of the necessary technical solutions – both software and hardware.

Starting points
The parties' submissions to the court regarding the action that are made outside court hearings shall be in the form of written pleadings. Parties who are not represented by counsel may – in cases before the general courts – submit the writ of summons, reply, notice of appeal, application for reinstatement and application for reopening of a default judgment orally by appearing in court in person. The general courts may also permit counsels other than lawyers to take such oral procedural actions.

Digitalisation in the pre-trial phase before the general courts
As a starting point, the general courts are about to make extensive use of digital technology in the pre-trial phase. This is the result of an extensive process which has been going on for about 15 years, and being implemented in several phases after 2017, and is expected to be completed by 2021. At the time of writing, this process has not applied to the Labour Court. In our answers to the questionnaire, we will give a brief outline of the digitalisation in the general courts and in the Labour Court.

Detailed provisions on the use of electronic communication in cases before the general courts were issued in royal decree of 28 October 2016 (FOR-2016-10-28-1258) on electronic communication with the general courts. The decree stipulates that the Court Administration shall establish a special portal ('Aktørportalen' which roughly can be translated as 'The Actor's portal') for electronic communication between the courts and the parties.

All pre-hearing formalities may be concluded through the portal in cases before the general courts. For lawyers, the use of the portal is compulsory.

Digitalisation in the pre-trial phase before the Labour Court
The Labour Court has so far not made use of digital solutions in the pre-trial phase. In time, electronic means will presumably be used by the Labour Court to the same extent as they are used in cases before the general courts.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer:

In proceedings before the general courts, documents received by the court in the electronic portal are available to the other parties to the litigation, transmitted through the portal. The Labour Court does not use the portal, and any documents are communicated by mail.

Between parties who are represented by lawyers before the general courts and the Labour Court, pleadings and enclosures shall be sent directly to the opposite party at the same time as they are sent to the court, i.e. the parties provide for copies to the other parties.

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:

The Labour Court does not use any electronic resources during the hearing.

In the general courts, electronic resources are to some extent used during hearings, and the use of such resources is administered by the professional judge.

There is an ongoing project in the general courts to extend the use of modern technology, including the possibility of presenting evidence through electronic means.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:

The Court Act § 197a – as amended in 2003 – and a royal decree of 28 October 2016 no 1258 have detailed provisions on the use of electronic communication in cases before the general courts. These provisions are expected to be incorporated into the Labour Dispute Act and apply to the Labour Court, although there is no specific time frame for this revision.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer:

Norway is among the few European countries where proceedings are not recorded. According to the Dispute Act § 13-7 the testimony of parties and witnesses during the main hearing shall be recorded electronically. More detailed rules on the recording of testimony were issued in royal decree 28 September 2018 (FOR-2018-09-28-1471). However, according to the Dispute Act § 13-7 para. 2 b) electronic recording can be waived if the court does not have necessary recording equipment available. Few courts have the necessary equipment, so the general rule in practice is that no recording of the testimony is made by the court. This also applies for the Labour Court.

If a recording is made, the parties are entitled to borrow the recordings to the same extent as they have a right of access to other procedural materials of

the court. A person whose testimony has been recorded has the same right. If a transcript of the recording is to be made the court can arrange this itself or leave it to the parties. The recording shall be archived together with the case.

According to FOR-2018-09-28-1471 § 6 recorded testimony shall replace oral testimony in appeal proceedings, unless oral testimony is necessary to ensure a fair trial.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:

The current regulation in the Court Act does not directly address whether or not participants to the proceedings may record them. The Court Act § 131a only expressly prohibits recordings of the proceedings in criminal cases if the recording is to be used in radio or TV transmissions. The starting point for employment cases is that there is no express prohibition on recordings.

If a judge is to forbid recording of a public hearing in an employment dispute - supposing the judge is aware of a recording being made – the decision must meet the criteria in the Court Act § 133 on contempt of court, i.e. recordings can be prohibited if the recording disturbs the proceedings, impedes the hearing of witnesses or otherwise does not respect the dignity of the court. It is assumed that the principle of respect for the dignity of the court means that anyone who wishes to make a recording of the proceedings, must get consent from the court before the recording is made, and that the court must inform parties and witnesses that they are being recorded. If a witness does not consent to the recording, the court may decide that the recording must stop. The court may also demand that a copy of the recording is made available to those that are recorded.

Whether or not a recording of a hearing may be submitted as evidence on appeal etc, must be assessed on the basis of the general rules on evidence in the Dispute Act. If a recording is made in breach of the court's prohibition on recording, it does not necessarily mean that the recording cannot be used as evidence. According to the Dispute Act § 22-7, the court may disallow improperly obtained evidence, but this decision must be based on a broad assessment, where account must be made of the quality of the evidence and the need for the recording as evidence.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:

The general courts have to some extent audio-visual equipment, or such equipment is installed temporarily for the hearing. As part of a preliminary study project on digital proceedings in the general courts, the goal is that all general courts shall have the necessary equipment within 2023.

The Labour Court does for the time being not have such equipment in the court room.

8. Are you permitted to take evidence by Skype or through similar platforms?
   v. If so, in what circumstances can evidence be taken by this mode

Answer:

According to the Dispute Act § 21-10 parties, witnesses and experts may be examined before the court by way of distance examination if direct examination is not practicable or would be particularly onerous or expensive. Distance examination should not take place if the testimony may be of particular importance or if it may be imprudent for other reasons. Distance examination may always take place if the expense or disadvantage of direct testimony before the adjudicating court is considerable relative to the importance of the dispute to the parties, or for testimony from experts who have made a written submission to the court.

Distance examination shall be conducted by way of video examination. If equipment for video examination is not available, audio examination may be used provided this is compatible with the right to a fair trial.

This provision is applied both by the general courts and the Labour Court, although not all courts have the necessary equipment for video examination.

   ix. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:

Many, but not all, the general courts have the necessary equipment for video examination. Our impression is that distance examination is used to some extent.

The Labour Court has in some cases used audio examination, but both the court and the parties prefer direct testimony before the court. Because of this, distance examination is rarely used. The Labour Court does not conduct video examinations.

x. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:

Whether evidence can be submitted satisfactorily through distance examination depends on the circumstances. The preliminary study on digital proceedings has stressed the need for necessary equipment to ensure adequate sound and picture quality. Not all courts have this equipment, and audio examination may not be sufficient.

The Labour Court, which is a court of first and last instance in cases concerning collective agreements, will only use audio examination where it is strictly necessary.

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:

The general courts are about to complete the process of digitalisation, and presumably the Labour Court will follow suit.

There is no doubt that digitalisation will make proceedings more effective, and that Norway is a “late bloomer” in this area. The delay is to some extent a result of lack of knowledge of advantages of digital technology and of the necessary funding, but that seems to have changed in recent years.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?
11. What data do you collect in relation to businesses?

Answer:

The court only requires the personal data necessary for the court to communicate with the parties. Individual complainants or a businesses that lodge a complaint before the general courts or the Labour Court must state their name and address.

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant’s personal data? and (ii) a corporate litigant’s business data?

    (Where applicable) Has your approach to the collection, retention and/or

processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer:

The data concerning individuals and corporate litigants are stored as part of the documents relating to the case, and kept in accordance with the regulations on the court's archives, and thereafter stored in the national archives.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:

These data are not accessed or used when evaluating the court's work, workload or need for resources or reforms.

14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:

The data is available to the other parties to the proceedings.

The courts do not have any particular safeguards in place to ensure that the data is only used for the purpose of the proceedings.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:

There has been no specialized training beyond general information on the changes due to GDPR and necessary adjustments to data systems and revision of internal procedures for processing personal data.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:

A dispute concerning right to privacy and GDPR regulations may be brought before the general courts. The Labour Court does not have jurisdiction in cases concerning breach of any GDPR provisions, unless there are relevant provisions in collective agreements.

A complaint concerning breach of the right to privacy may be raised based on the Norwegian Act on implementation of GDPR. The Norwegian Data Inspectorate has the investigative and corrective powers according to GDPR article 58. Decisions by the Data Inspectorate may be brought before the Privacy Appeals Board, and the Privacy Appeals Board decision may be brought before the general courts. In addition, the worker may demand compensation for material and non/material damages.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:

No.

18. Has GDPR impacted on the format in which your judgments are published?

Answer:

No.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:

Decisions from the general courts are published on the online legal resource website Lovdata.no. In labour law cases, the personal data of the employee will be redacted. The names of employers will as a main rule not be redacted, unless it is necessary to protect the personal data of employees involved in the case, for example in cases concerning sexual discrimination.

The judgements are also published on the Labour Court's website, and in an annual report published as an e-book. The personal data of individual parties are redacted in the published judgements.

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer:

No.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer:

No.

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer:

No.

SERBIA

REPORTERS:
JUDGE PREDRAG TRIFUNOVIĆ, PRESIDENT OF THE CIVIL DEPARTMENT, SUPREME COURT OF CASSATION
MS MIRJANA POPOVIC, ADVISER, SUPREME COURT

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:

In accordance with the law there is a possibility to submit a complaint, ordinary and extraordinary legal remedies and other submissions to the court, by electronic means (Article 98, para 2 of the Law on Civil Procedure). Details of this way of communication have been provided within the Courts Rulebook. However, in every day practice this possibility is used rarely (mainly for communication between parties and court's management if necessary). Amendments of the Law on Enforcement and Security provide for the sale by electronic means and develop in more details use of digitalization within the enforcement proceedings. Also, there is a legal possibility of review of arguments and appendices of supporting documents in cases when ICT has been implemented.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer:

Documents received by the court in relation to proceedings which have to be served to parties as required by the law (such as complaint, appeal, extraordinary legal remedies, judgment, decision that could be appealed), only court shall provide to the party or another participant in the proceedings. A party in proceedings that creates another type of document has a possibility to forward it directly to another party without involvement of the court. When a party directly provides another party with submissions and documents, such a submission together with the proof that documents are served, should be also submitted to the court. Transmission of documents by electronic means is possible, under a precondition that it could be proved that a document was actually delivered (Article 129, para 2 of the Law on Civil Procedure)

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:

Judges do not process electronic submissions. Case law in electronic form is available to judges (all decision of the Supreme Court of Cassation and Constitutional Court are available at their websites). There is also a possibility of using laws by electronic means during the hearing. Judges mostly have sufficient training for use of hardware and software available to them.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:

.... It is necessary to amend the rules of the procedure taking into account development of technology and digitalization as it has already been done in our country in the area of state administration and lately within the enforcement court proceedings. Currently, the amendments of the Law on Civil Procedure are pending, including provisions on use of ICT.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer:

Within courts proceedings mostly have not been recorded digitally. (Commercial Court of Appeal keeps files electronically recorded – scaned.) If the hearing was recorded, parties to the proceedings are entitled to a copy of the recordings.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:

Participants in the proceedings are not permitted to record trial, by electronic means such as laptop or mobile device.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:
My courtroom is equipped with computer and audio-visual equipment. However, within the Supreme Court of Cassation there are no hearings and evidence is not introduced, including in digital format.

8. Are you permitted to take evidence by Skype or through similar platforms?

   i. If so, in what circumstances can evidence be taken by this mode

Answer:
It is permitted to take evidence by Skype or similar platforms.

   i. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:
Taking evidence in such manner is rarely used since the parties mostly do not propose this way of producing evidence.

   ii. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:/

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:
Judges mostly embrace new technology although there are some reserves concerning novelties in technology. It seems that too broad use of ICT “kills” creativity in writing of judgments (for example, all judgments in so called mass labour disputes are very much alike).

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer:
Individual complainants in labour disputes (as well as in other civil and commercial disputes) are not required almost any personal data, except their address. In the enforcement procedure, the list of required data is broader, starting with the birth identity number for individuals and tax identity number for business entities. After the commencement of implementation of the General Data Protection Regulation

(GDPR), which in our country is not source of law (since Sebia is not EU member), the new Law on Data Protection has been adopted ("Official Gazette of RSC" no. 87/2018 of 3 November 2018, to be implemented from September 2019) which is in line with the European standards including the GDPR. However, certain provisions of this Law concerning the limitations of data revealing (Art. 23 and 40) have been in the procedure of assessment of their constitutionality before the Constitutional Court.

11. What data do you collect in relation to businesses?

Answer:

See **Answer** no. 10

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?

    (Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer: Court case files are kept within the court for 10 year period, and then are transferred to Archive.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:/

14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:
All data within the court files are available to parties in the proceedings, their legal representatives and their attorneys at law. They could be available also to other participants (such as intervening party, heirs etc.) in case that they have justified interest.

Data which contain information of public importance is available in accordance with the Law on free access to information of public importance and Law on personal data protection. In each concrete case assessment of the content of the requested document is taken in order to establish if it contains information of public importance and if there is a justified interest of public to be informed. Also, access to information could be allowed only partially depending on circumstances and necessity to protect personal data, in accordance with limitations provided by the law.

Regarding safeguards it is possible to initiate an administrative dispute against decision of the Supreme court of Cassation if the access to information was denied.

Against such decisions of lower courts it is possible to submit an appeal to the Commissionaire for information of public importance and personal data protection

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:
Judicial Academy organizes different types of training for judges and judicial assistants in different legal areas including data protection (the latter took place for example during May, June and July 2019). Also other organizations in cooperation with courts have been discussed these issues. See for example publication: http://www.partners-serbia.org/en/wp-content/uploads/2016/05/Transparency-and-Privacy-in-Court-Decisions.pdf

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:

Violation of right to privacy can be subject of different civil actions not only concerning labour disputes. For all these civil cases complaint could be filed to Higher Court as a first instance court, and appeal to the Appellate Court. Decision of the Appellate Court is final. Extraordinary legal remedy (review on points of law) to the Supreme Court of Cassation in labour disputes is permitted only in cases relating to employment, termination of employment and protection from discrimination. Accordingly, in disputes in relation to personal data protection extraordinary legal remedies before the Supreme Court of Cassation are not permitted.

I also note that protection of workers has been provided not only by Labour Law and Law on civil servants, but also by other legislation such as Law on Protection from Discrimination, Law on the prevention of abuse at work (mobbing). Also, protection of rights of workers is provided by the above mentioned Law on Data Protection and Law on access to information of Public Importance, as well as by ratified international conventions.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:
Copy of judge's notes taken at a hearing is always available to parties in the proceedings. There are individual cases of access request to the judge' notes taken at a hearing in all disputes including labour disputes – request for information of public importance. See **Answer** above regarding question 14.

18. Has GDPR impacted on the format in which your judgments are published?

Answer:
Judgments of the Supreme Court of Cassation have been published at the website of the Court without stating personal data. Supreme Court of Cassation soon after commencement of the GDPR implementation adopted the Rulebook on anonymization of data contained in the court decisions. Similar Rulebooks was later adopted by four Courts of Appeal which also respect personal data protection when publishing their decisions.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:
The same as above

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer:
It is not required from the Supreme Court of Cassation and from other courts to submit data on employee or on employer to any government department or central statistics agency.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer:
I am not aware that such data is combined with other data.

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer:
I have no competences to give **Answer** to this question.

SLOVENIA

REPORTER:
JUDGE MARIJAN DEBELAK, SENIOR SUPREME COURT JUDGE

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:
At present time pre-hearing formalities associated with proceedings before labour courts in Slovenia cannot be concluded by electronic means.

Although the procedural rules (The Civil Procedure Act) have been amended and allow submission of documents by electronic means, the courts do not yet have the necessary equipment (programmes) to conduct this in practise. Complaint/appeal forms and statements of opposition, appendices of supporting documents etc. must currently all be sent to the court in physical form.

The necessary programmes to allow submission of documents by electronic means are currently being developed.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer:
Documents are usually provided to other parties to the litigation by the court itself in physical form (not by electronic means).
The procedural rules in some cases allow also that the documents are sent by the party that created them. Civil Procedure Act in Art. 139.a states that:
(1) if *all* the parties in the proceedings are represented by counsels who are attorneys, in the course of the proceedings motions and attachments may be served directly between the counsels. Direct service between counsels shall be effected by registered mail with a return receipt, *or by electronic means* into a secure electronic post box.
(3) A copy of the motion and a proof of service shall be sent to the court as well.
(4) By agreement of the parties, service may also be effected by the means specified in this Article provided the parties are not represented by counsels who are attorneys.

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:
As described above, electronic submissions of documents is currently not possible.

During the hearing of a case all documents are handed over to parties in physical form.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:
The court's procedural rules (Civil Procedure Act) has long been amended (in 2007) in response to developments in technology but the courts are not yet adequately equipped to implement those rules.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer:
Proceedings before courts can be digitally recorded (it is not necessary) and if they are recorded, such recordings are subsequently relied on by an appellate court.
Civil Procedure Act in Art. 125/1 states that the presiding judge has the right to order audio or visual recording of the hearing. The parties and other participants in the hearing shall be informed of any such order.
In practice audio recording of the hearing is usually made when several witnesses have to be interrogated and for long or complicated interrogations (e.g. interrogation of experts).

If proceedings are recorded, the parties to the proceedings receive a transcript of the audio recording.
Civil Procedure Act in Art. 125a/4 states that a transcript of the audio recording shall be made at five days from the recording having been made. The parties shall have the right to take insight into the transcript and to complain about any incorrectness of the transcript. The presiding judge shall decide about the complaint without conducting a hearing.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:
No, participants in proceedings before court are not permitted to record the proceedings on a mobile device or laptop.

Participants are expressly prohibited from making such recordings. According to House rules of some courts participants must leave their mobile device at the security service at the entrance of the court (this does not apply to attorneys).

Moreover Court Rules in Art. 17 state that:

(1) Recording and photographing in cases where the public is not excluded is permitted (only) immediately before the commencement of the trial and at the oral pronouncement of the decision.
(2) Recording of the entire main hearing in cases where the public is not excluded can exceptionally be authorized in writing by the President of the Court. The request for the recording must be submitted at least two working days before the start of the trial.
(3) The judge conducting the proceedings shall permit recording only in the extent which is necessary for providing correct information for the public and which is performed in a manner which does not obstruct the course of the trial.

There is yet no legal practice regarding the admissibility of a recording in appellate or review forum if a participant nevertheless makes a recording.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:
Courtrooms are equipped with computer and audio-visual equipment so that some evidence can be introduced in such a way (e.g. watching a videotape of a surveillance camera). Nevertheless evidence are mostly handed over to parties/witnesses in physical form (documents are not scanned).

8. Are you permitted to take evidence by Skype or through similar platforms?
   i. If so, in what circumstances can evidence be taken by this mode

Answer:
Courts usually take evidence long distance by video conference; if this is not possible they could also use Skype or similar platforms.

Regarding the circumstances in which evidence can be taken by this mode Civile Procedure Act in Art.114a states:
(1) By consent of the parties, the court shall have the right to permit to the parties and their counsels to be at another place at the time of the hearing and to perform procedural acts there provided an audio and visual transmission has been provided from the site of the hearing to the place, or place, where the party (parties) and their counsels are located, and vice-versa (video conference).
(2) Under the conditions laid down in the preceding paragraph, the court shall also have the right to take evidence by hearing the parties and witnesses and evidence by a court expert.

   i. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:
Courts are rarely requested to take evidence in such manner.

   ii. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:
Yes, although, as stated above, these cases are rare.

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:
The potential of technology has not yet been embraced sufficiently but there are currently several projects in progress regarding the digitalisation of the judiciary, e.g. electronic legal files, submission of documents by electronic means, electronic sessions. This could help facilitate the proceedings as well as lower the court's costs.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer:
Name, surname, address, social security number (EMŠO) or in some cases (if individual complainant does not have social security number) tax number or date of birth (Civil Procedure Act, Art. 180.a).

11. What data do you collect in relation to businesses?

Answer:
Name, address, company's unique business identifier.

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?
(Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer:
Personal data in files are retained as long as the file is retained, which is for labour court files 10 years (Supreme Court's President Internal rules on storage of files and other documentary material, Art. 5).

Any final decision in the main proceedings, registers, directories and auxiliary books are kept permanently (Court's rules, Art. 244/2).

The Supreme Court's expert services have revised the processes of personal data collection and adjusted to the requirements of the General Data Protection Regulation (GDPR), although no major changes were made.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:
This question is not clear. Personal data (name, address, social security number) is not interrogated by court in order to optimise it's service.

14. Is data of this nature made available to other parties to the proceedings? If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:
Personal data is made available to other parties to the proceedings. There are no special safeguards regarding the usage of this data.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:
Members of court's expert services who work in the field of data protection have undertaken training in relation to the application of GDPR. Trainings are currently being prepared also for other staff.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?
If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:
If workers think their right to privacy in their personal data has been breached by their employer they usually turn to Information Commissioner (not to a labour court).

Labour courts could adjudicate e.g. in compensation cases.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:
No.

18. Has GDPR impacted on the format in which your judgments are published?

Answer:
No.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:
All the judgements of second instance courts and The Supreme Court are published in full on the internet without parties' and witnesses' personal data (anonymised).

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?
If so, is this submitted in anonymised or pseudonymised format?

Answer:
Court employee's personal data is (when a person is employed) sent to Health Insurance Institute of Slovenia. Court employee's data is also part of central personnel records of the state administration.

Public Employees Act, Art. 46 states that:
(1) The central personnel records of the state administration shall be kept for the purposes of implementing personnel management policies in state administration authorities, payroll accounting, fulfilling the employers' other obligations, and making decisions on the rights and obligations arising out of employment relationships.
(2) The central personnel records shall be managed by the ministry responsible for administration.
(3) The central personnel records shall be kept in the form of a computerised database.

Art. 47
(1) The following data on public employees shall be kept in the central personnel records:
1. identification data (full name, address of residence, and EMŠO);
data on employment (type of employment relationship – indefinite duration or fixed-term; the date of entering employment);
data on the current post or managerial position and on the previous posts or managerial positions in authorities;
data on appointments, promotions and current title;
data on the attained level of education, data on other functional and special knowledge, participation in different forms of training and further training, and successfully passed professional certification exams and tests, and other data regarding professional qualifications;
data on experience in the field of European affairs;
data on previous employment, the years of employment, pensionable service and the years of service;
data on carrying out of functions, participation in project groups and on the performance of other work in the interest of the employer;
data on annual assessments;
data on recognitions and awards;
data on finally determined disciplinary responsibility or liability for damage;
data on the final determination of incompetence;

data on the termination of the employment relationship;
a brief curriculum vitae, if so desired or approved by the public employee;
data on the personal security clearance;
data required for payroll accounting;
other data required by an Act.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer:
No (see previous **Answer**).

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer:
I am not aware of that.

SPAIN

REPORTER:
MS. CARMEN AGUT GARCÍA, ADVISOR, SUPREME COURT

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer:

The Supreme Court, Sala IV (Social), carries out all the prosecutions electronically.
The procedures followed in the lower instances (when they have been processed) are also received electronically.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer:

Yes. The documents that are received by the Court are sent to the other litigating parties: (a) by the party that created them and (b) by the Court itself. In both cases they are transmitted by electronic means.

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:

Yes. All the members of the Court and the staff have the appropriate technology to: (a) process parties' electronic submissions and supporting documents, (b) consult legislation, (c) consult case law during the hearing of a case.

Yes. All the members of the Tribunal and the staff have sufficient training in the use of the hardware and software available to them. For this they have received training, and training courses in new technologies.

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:

Yes. Digitization has necessitated various regulatory reforms. Among the most recent:
- Law 19/2015, of July 13, on administrative reform measures in the area of the Administration of Justice and the Civil Registry, and
- Law 42/2015, of October 5, on the reform of Law 1/2000, of January 7, on Civil Procedure. In both, several provisions are included that contemplate aspects related to telematic and electronic communications.

There are also rules in: LOPJ (art 230), LEC (art 162) and LRJS (art 56).

Previously:
- Royal Decree 84/2007, of January 26, on the implementation in the Justice Administration of the LexNET telecommunications computer system for the presentation of briefs and documents.

- Law 18/2011, of July 5, regulating the use of information and communication technologies in the Administration of Justice.

- Royal Decree 1065/2015, of 27 November, on electronic communications in the Administration of Justice in the territorial scope of the Ministry of Justice and by which the LexNET system is regulated.

- Law 11/2007, of June 22, on electronic access of citizens to Public Services.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?
   If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer:
Yes. The proceedings before the Social Chamber of the Supreme Court are recorded through electronic channels. The whole file is digital and the parties have access to it.

Very few views are held before the Social Chamber of the Supreme Court. In any case,
the views are recorded on a medium suitable for recording and reproducing the sound and the image. From the trial record that is recorded, a copy is given to the party who has been a party to the proceedings, if so requested.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:

The participants in the proceedings must request the Court to provide a digital copy of what is recorded in the file.

The copy is made by the Court and delivered to the party, guaranteeing its integrity and authenticity.

In the oral hearings an image and sound recording is carried out by the Court. The recording made by the participants in the process or by individuals is not allowed.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:

Yes. The courtrooms are conveniently equipped with computers, audio-visual media and other equipment to facilitate the introduction of evidence in digital formats

8. Are you permitted to take evidence by Skype or through similar platforms?
   vi. If so, in what circumstances can evidence be taken by this mode

Answer:

No. It is not allowed to take evidence by Skype or through similar public platforms.
However, it is allowed to use other, more secure, similar platforms, which is facilitated by the Administration itself

   xi. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:

Due to the type of matters dealt with, it is very rare to have to take of evidence in this way before the Social Chamber of the Supreme Court

xii. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:

Yes. It is satisfactory because it greatly facilitates the taking of certain evidences.

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:

The Social Chamber has been the pioneer court in accepting the use of new ones in the Supreme Court, although there is still a long way to go until in the area of justice new technologies can fully develop their full potential.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer:

Name and surname
Adress
ID

11. What data do you collect in relation to businesses?

Answer:

Company
Registered office
NIF

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?

    (Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer:

In order to respond to the new needs, LO 7/2015 amended the LOPJ to include

data protection within the Courts, distinguishing between jurisdictional and non-jurisdictional files; the first are governed by the procedural laws, the responsible is the jurisdictional body and the control authority is the General Council of the Judicial Power (CGPJ), the second will be governed by the existing regulations on the protection of personal data, the responsible is the Judicial Office and the control authority of these files will be the Spanish Agency for Data Protection (AEPD).

After the RGPD, the LOPDP has ruled that the data processing, in both cases, will be governed by the provisions of Regulation (EU) 2016/679 and the LOPDP itself and the LOPJ.

In this way, the custody of the data of the individual litigants and the companies of the judicial files does not correspond directly to the judicial body, but to the General Subdirectorate of New Technologies of the Ministry of Justice.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:

Although it is necessary to know the number of issues handled by the Chamber and its nature, it is not necessary to use the personal data of the litigants to determine issues related to resources and facilities and optimization of resources.

14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:

Yes. All the data of the parties are available to all litigants present in the process.

In July 2019, the Government Chamber of the Supreme Court has agreed that in all judicial documents handed over to the parties, the warning of the prohibition of the use of personal data recorded in them should be recorded.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:

Yes. The CGPJ has offered numerous courses so that judges and magistrates know the principles of the GDPR that are relevant to their work.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:

The worker who considers that his right to the protection of personal data by his employer or the data processor acting on his behalf has been injured can complain to the courts and tribunals of the social jurisdictional order.

The Social Chamber of the Supreme Court with respect to individual claims of workers' rights is only heard through appeal.

Although previously this type of conflict could have been raised, the truth is that it has been the Organic Law 3/2018, of December 5, of Data Protection and digital rights guarantee (LOPDGDD), which adapts the GDPR in Spain. This Law devotes arts. 87 to 91 to regulate certain issues relating to the protection of data of workers in the field of business, and adds in the Workers' Statute the art. 20 bis, on the rights of workers to privacy in relation to the digital environment and disconnection. It is a very recent law, so it is necessary to wait for the actions that derive from the entry into force of this rule to know the new issues that will arise and the **Answer**s that this Court is offering.

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:

No. The notes that the judge takes are private and do not have access to the judicial file.

18. Has GDPR impacted on the format in which your judgments are published?

Answer:
The form of the sentences has not changed in the scope of the process. However, the way of making them public has been modified.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:

Yes. As established in art. 619 LOPJ the Judicial Documentation Center

(CENDOJ) is a technical body of the CGPJ, whose functions are the selection, management, treatment, dissemination and publication of legislative, jurisprudential and doctrinal legal information.
The CENDOJ, after the corresponding technical processes, including those related to the protection of data of the litigants, officially publishes on the web all the judgments and orders issued by all the Supreme Court Chambers.

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer:

No.

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer:

No.

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer:

No.

SWEDEN

REPORTERS:
JUDGE CATHRINE LILJA HANSSON, NATIONAL LABOUR COURT
JUDGE KARIN RENMAN, NATIONAL LABOUR COURT
JUDGE JONAS MALMBERG, NATIONAL LABOUR COURT

TOPIC 1: DIGITALISATION

1. To what extent can pre-hearing formalities associated with proceedings before your court be concluded by electronic means - (e.g. submission of complaint/appeal forms and statements of opposition; outline arguments and appendices of supporting documents)?

Answer: A summons application, that is the document through which legal proceeding is initiated, shall be signed by the plaintiff or his or her attorney in his or her own hand. Thus it is not possible to be concluded by electronic means. There is a proposal pending which would make it possible to sign a summons application though an electronic signature. Also a power of attorney shall be signed.

With those exception there are no requirements that other documents send to the court shall be signed. Thus except for the first document, the exchange of writings may and are usually made by e-mail.

The pre-hearing usually contains a meeting in which the parties and/or their shall participate. The Court my allow them to participate by telephone or video conference. Although this possible, it is – at least in the Labour Court, only used occasionally.

2. Are documents received by your court in relation to proceedings provided to other parties to the litigation:- (a) by the party that created them; (b)the Court itself ? In either case, are they transmitted to other parties by electronic means?

Answer: Documents are provided to other parties by the court. The first document send to the respondent –the summons – is send by mail. Subsequent exchange of documents is usually sent by e-mail.

3. Are the members of your court provided with the appropriate technology to process parties' electronic submissions and supporting documents, including case law/ legislation/ references to codified law etc, during the

hearing of a case? Are the court members provided with sufficient training in the use of (i) hardware and (ii) software available to them?

Answer:
Yes

4. Has it been necessary to amend your court's procedural rules in response to developments in technology and/or the advent of digitalisation?

Answer:
About 10 years ago a reform took place where all local districts courts where to record oral evidence (hearings witnesses) through video. In the Court of appeal and in the Labour Court are witnesses usually not heard again (as previous was the case). Instead the video of the hearing is showed at the Court of appeal and the Labour court. To implement the courts where equipped for recording and showing videos.

5. Are proceedings before your court digitally recorded? Are such recordings subsequently relied on by an appellate court?

If proceedings are recorded, are the parties to the proceedings entitled to a copy of the recordings

Answer:
As mentioned are the oral evidence are recorded by the court and subsequently relied on by an appellate court. The parties to the proceedings is entitled to a copy of the recordings At courts of last instance, such as the Labour Court, do not record the oral evidence.

There are no requirement that other parts of the main hearing shall be recorded. If this is done, the recordings are only internal working material for the court, which is not provided to the parties or an appellate court. The Labour Court record sounds during the whole hearing for internal use.

6. Are participants in proceedings before your court permitted to record the proceedings e.g. on a mobile device or laptop? If not, are participants expressly prohibited from making such recordings? If a participant nevertheless makes a recording does it become admissible in another (e.g. appellate or review) forum?

Answer:
The participant is allowed to record sound, but not pictures.

7. Is your courtroom equipped with computer, audio-visual and/or other equipment to facilitate the introduction of evidence in digital formats?

Answer:
Yes, but technical problems are not unusual.

8. Are you permitted to take evidence by Skype or through similar platforms?
   vii. If so, in what circumstances can evidence be taken by this mode

Answer:
Orel evidence may be heard by telephone or a video conference, if there is special reasons. This could be the case where there are the huge cost for a person to come to the court, and his or her testimony is not of major importance for the case.

xiii. If so, are you routinely or rarely requested to facilitate the taking of evidence in such manner?

Answer:
It quite common to hear oral evidence by telephone.

xiv. Has the taking of evidence in such manner proven to be satisfactory to the court?

Answer:
Yes

9. In your view, has your court sufficiently embraced the potential of technology to facilitate greater access to justice?

Answer:
Not yet.

TOPIC 2: DATA PROTECTION

10. What personal data do you require from individual complainants?

Answer:
A party is obliged to state his or her name, personal identification number, an address where he or she can be reached, telephone number and e-mail address.

11. What data do you collect in relation to businesses?

Answer:
The same (but registration number instead of personal identification number).

12. For what period after the conclusion of proceedings do you routinely retain (i) an individual litigant's personal data? and (ii) a corporate litigant's business data?

    (Where applicable) Has your approach to the collection, retention and/or processing of parties' personal data been revised following the commencement of the General Data Protection Regulation (GDPR)?

Answer:
All material in the case file, including the aforementioned personal data, is preserved forever, for some years by the court and then by the National Archive.

No revision as regards the handling of cases on account of GDPR.

13. To what extent, if any, can you interrogate such data in order to inform your understanding of your need for resources and facilities to optimise your service provision?

Answer:
Anonymised data can be used for administrative purposes, such as statistics, but not personal data.

14. Is data of this nature made available to other parties to the proceedings?

    If so, what safeguards are in place to ensure that such data is used only for the purpose of the proceedings before the Court?

Answer:
As a general rule all material in a case file is subject to public access and it may be used for any (legal) purpose.

15. Have the members of your court undertaken training in relation to the application of GDPR principles to their work?

Answer:
Some.

16. Does your court have any role in the adjudication of complaints by workers that their right to privacy in their personal data has been breached by their employer or a data processor acting on the employer's behalf?

    If so, what remedy or remedies can be granted to workers in such circumstances?

Answer:
Yes, that would be considered a labour dispute (provided that the employer is a party).

17. Are a labour court judge's notes taken at a hearing subject to a subject access request in your jurisdiction?

Answer:
No. There is an exception for such notes (provided that they are not externally communicated or saved in the court file).

18. Has GDPR impacted on the format in which your judgments are published?

Answer:
No.

19. Are your court's judgments published? If so are they published in full (e.g. on the internet) with or without redaction of parties' and witnesses' personal data?

Answer:
Names of natural persons are replaced by initials (or similar) when judgements are published.

20. Are you required to retain and submit employee and/or employer data to any central statistics agency and/or government department in your jurisdiction (e.g. employee social security number; employer unique business identifier)?

    If so, is this submitted in anonymised or pseudonymised format?

Answer: -

21. Are you aware if such data is combined with other data for the purposes of public administration and/or policy development?

Answer: **-**

22. Is the data you collect and retain – and/or submit to another agency – subject to interrogation by artificial intelligence?

Answer: **-**

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Geneva, 25 September 2019