

Labour courts in Europe

Proceedings of a meeting organised
by the International Institute
for Labour Studies

Edited by Bert Essenberg



36900

International Institute for Labour Studies Geneva

Copyright © International Labour Organisation
(International Institute for Labour Studies) 1986

ISBN 92-9014-407-6

Copies can be obtained direct from the International Institute for Labour Studies,
P.O. Box 6, CH-1211 Geneva 22 (Switzerland).

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
Summary of the discussions	3
The labour court system in Belgium, by J. René Rauws	11
The Labour Court of Finland, by Jorma Pelkonen and Kari-Pekka Tiitinen	14
The organisation of labour courts in France, by Pierre Veillieux	19
The labour jurisdiction in the Federal Republic of Germany, by Otto Kissel	22
The National Labour Court of Iceland, by Bjarni K. Bjarnason	27
The Labour Court in Ireland, by Maurice P. Cosgrave	30
The labour courts in Israel, by Zvi Bar-Niv	41
The Labour Court of Norway, by Stein Evju	44
The labour court system in Spain, by Rafael Martínez Emperador	48
The court procedure in labour disputes in Sweden, by Ake Bouvin	52
Labour courts in Switzerland, by Alexandre Berenstein	57
Industrial tribunals in the United Kingdom, by Lord McDonald	60
Annex I: List of participants	63
Annex II: Suggested points for discussion	65

INTRODUCTION

In September 1984 the International Institute for Labour Studies in co-operation with an initiating committee composed of Judge Zvi Bar-Niv, President of the National Labour Court of the Federal Republic of Germany, Judge Ake Bouvin, President of the Labour Court of Sweden, and Mr. Alan Gladstone, Chief of the Industrial Relations and Labour Administration Department of the ILO, organised in Szeged, Hungary, a meeting of presidents of labour courts and similar institutions in Europe. The purpose of the meeting was to allow the participants to share their experience and problems and exchange views on a number of matters of common interest concerning the role and functioning of their institutions.

The meeting was attended by judges of courts from ten countries representing, with few exceptions, those European countries in which such institutions are found. These were: Finland, France, the Federal Republic of Germany, Hungary, Iceland, Israel, Norway, Spain, Sweden and Switzerland. The meeting was also attended by observers from Canada.¹ Judges from Belgium, Ireland and the United Kingdom could not participate in the meeting but prepared papers on the labour court system in their respective countries.

The organisation, competence and the place of the labour courts in the judicial system differs from country to country and sometimes even within one country (Switzerland).

A common feature in the countries concerned, with the notable exception of Spain, is the importance attached to the presence of lay judges, representing employers' and workers' viewpoints, in one or more instances of the labour court system. In France and in the Canton of Geneva (Switzerland) the courts of first instance are entirely composed of lay judges, elected by their peers.

In a number of countries (Finland, France, Ireland and Sweden) there is one labour court with sole territorial jurisdiction. Other countries (Federal Republic of Germany, Israel and Spain) have established a labour court system consisting of two or more instances. Again other countries have introduced a system of labour courts or similar bodies as courts of first instance in labour matters; the decisions of these courts of first instance can, under certain conditions, be appealed in the ordinary

¹ A list of participants is included in Annex I.

appeal courts, which often have specialised chambers or divisions for labour and social matters.

It is also important to note that although there exist differences in jurisdiction between the labour courts in Europe, none of the courts concerned has jurisdiction in economic (or interest) disputes but rather only in disputes over rights (i.e. "legal" disputes). The court in Ireland can perhaps be seen as an exception to this rule as it has advisory competence in economic disputes.

Several of the courts have jurisdiction only in individual disputes, while other courts have jurisdiction only in collective disputes. Few courts (Belgium, Federal Republic of Germany, Israel and Spain) also have jurisdiction in certain disputes concerning social security legislation.

For every country represented, a paper was prepared by a participant from that country, describing the organisation and functioning of "his" labour court system. These papers are included in this publication. The ILLS, on the basis of suggestions from members of the Initiating Committee, prepared an extensive list of points for discussion (see Annex II) which sought to pinpoint the significant subject areas.

The importance of the meeting and of this publication lies in the recognition of the important role of labour courts in ensuring equity and social justice and of their contribution to harmonious industrial relations in the countries concerned. The meeting also demonstrated the importance attached by the ILLS and the ILO to the system of labour courts.

SUMMARY OF THE DISCUSSIONS

1. Judge Zvi Bar-Niv, speaking on behalf of the Initiating Committee, introduced the members of the Committee and welcomed the participants. He discussed the origins of the Committee and the reasons for organising this meeting with the help of the International Institute for Labour Studies (IILS) and the International Labour Organisation (ILO). He thanked the organisers of the European Regional Congress of the International Society for Labour Law and Social Security, in particular Professor Nagy, for their co-operation without which it would not have been possible to hold this meeting. Finally, Judge Zvi Bar-Niv indicated that the Initiating Committee had decided for this first meeting, hopefully to be followed by similar meetings in the future, to invite only the judicial members of labour courts in order to allow for a more thorough discussion of common problems in an atmosphere free of constraints.

2. Mr. Alan Gladstone, on behalf of the IILS and the ILO, in his remarks noted that this was the fourth in a series of meetings organised by the IILS for labour court judges. Earlier meetings concerned judges of labour courts, industrial tribunals and similar institutions in industrialised countries (1973), industrial courts in English-speaking developing countries (1976) and labour courts in French-speaking Africa (1977). The organisation of this meeting demonstrated once again the importance of labour court systems for industrial relations as well as the interest of the ILO and the IILS in such systems. This and similar meetings could help the labour court judges to improve the operation of their courts, to exchange experiences with other judges and to discuss common problems.

3. Labour courts were established for various reasons. In 1970 the judicial system in Belgium underwent a fundamental reform, among other things in order to bring all legal social disputes within the competence of the labour tribunals and courts. Another aim was to harmonise the autonomy of the labour courts with the unitary nature of the judiciary. In Finland the establishment of a separate labour court was influenced by the following facts: (i) ordinary courts of law were regarded as too slow; (ii) these courts did not have the necessary expertise to settle disputes arising out of collective agreements; and (iii) a separate labour court of special composition would more easily gain the confidence of workers' organisations. The basic idea behind the dispute board (conseil de prud'hommes) in France is the desire to allow plaintiffs to have their case heard by judges who are particularly sensitive to labour problems by virtue of their own occupational activity or of the nature and subject matter of the disputes. The boards also

reflect a desire to democratise legal proceedings both in the way the members are elected and by the requirements for election. In the Federal Republic of Germany, the Constitution lays down that there are five independent areas of jurisdiction, one of them being labour jurisdiction. The law determines which cases are assigned to particular areas of jurisdiction. The labour court system in Israel was not imposed upon the labour relations parties but was established in response to a mutual request by the parties in 1967. The establishment of the labour court in Norway was the result of a growing understanding between the industrial relations parties and the government based on the idea of promoting and strengthening collective agreements and creating machinery for the peaceful solution of industrial disputes.

4. The composition of the courts varies from one country to another but in almost all countries the courts are composed of one or more professional judges and a varying number of lay assessors. In Belgium the labour courts are composed of professional magistrates and lay members representing the representative trade unions, employers' organisations and the organisations of self-employed workers. In addition, there are special public prosecutors (*auditeurs du travail*). The Finnish labour court has a tripartite composition: eight members with the legal training required for judicial appointment, four members appointed upon nomination by the most representative employers' organisations, four nominated by the central workers' organisations and four other members who must be familiar with employment relationships in the civil service, nominated by the public authorities and the central unions of civil servants' associations. The courts of first instance in France (*conseils de prud'hommes*) are composed exclusively of members who exercise an occupation either as employer or employee and who are elected by their peers. The presidents of the courts are elected by and from the members for one year and are chosen alternatively from among the workers' and employers' members. In the Federal Republic of Germany, the local labour courts consist of professional judges and labour judges, i.e. lay assessors appointed from lists of candidates submitted by employers' associations, trade unions, independent employees' associations and public corporations. The state (*länder*) courts and the federal labour court also have lay assessors. The labour courts in Israel consist of professional judges, lay members and registrars. The lay members are appointed after consultation with the most representative employers' and workers' organisations. In Iceland, the labour court is composed of three professional judges, one judge appointed by the federation of employers and one appointed by the central trade union organisation. The lay members may be replaced by other lay judges - depending on the dispute before the court - who are appointed by the organisations concerned. The Norwegian labour court has three neutral (professional) judges and four lay judges appointed from among persons nominated by the major organisations of workers and employers. These persons may not be officials or members of the executive of one of the nominating organisations. In Spain, a notable exception compared with other countries, the labour courts are exclusively composed of professional career judges. There is no provision for either a jury or joint representation of workers and employers. The Swedish labour court is composed of three chairmen and three deputy chairmen, all having legal training and experience as judges. In addition there are three so-called

"professional" members who have specific knowledge of the conditions on the labour market and who cannot be regarded as representing the interests of employers or employees. The 13 lay members of the court are appointed upon the recommendation of the most representative employers' and workers' organisations. The industrial tribunals in the United Kingdom are composed of a legally qualified chairman and two lay members, one from each side of industry. The Employment Appeal Tribunal is composed of high court judges and of lay members with special knowledge of, or experience in industrial relations. In the Canton of Geneva (Switzerland) the labour court of first instance (conseil de prud'hommes) is composed entirely of workers' and employers' representatives elected by their peers. The labour court of appeal (unique in Switzerland) is presided over by a judge from the court of justice, assisted by two employer and two worker judges. In most other Swiss cantons having a labour court, the president is generally a professional judge, assisted by lay assessors - as the representatives of workers and employers - elected by the people or the cantonal parliament, often upon the proposal of occupational organisations.

5. In all the countries concerned the labour courts are competent to hear only "legal" or "rights" disputes. In certain countries the labour courts are only competent for individual disputes. In Belgium the labour courts are competent for all individual legal disputes with regard to labour relations, social security and special benefits, social benefits for the handicapped, minimum standards of living, etc. In the field of social security and the various benefits, the courts have the competence to apply administrative sanctions. The dispute boards in France are the courts of first instance for individual disputes arising out of individual employment contracts. All disputes are first submitted to the conciliation committee of the board and, in case of disagreement, they are brought before the judicial committee of the board. The labour courts of first instance in Geneva (Switzerland) have jurisdiction in all individual disputes between employers and workers arising out of the employment contract. The industrial tribunals in the United Kingdom have jurisdiction in disputes arising out of redundancies or unfair dismissals, out of matters affecting the relationship between employer and employee as specified in the Employment Protection (Consolidation) Act, breaches of provisions of the Equal Pay and the Sex Discrimination Acts as well as complaints under the Race Relations Act.

6. In a number of other countries, the labour courts only have jurisdiction in collective disputes. This is the case in Finland where the labour court has sole territorial jurisdiction with material competence over legal disputes arising out of collective agreements or the Collective Agreements Act. In Iceland the labour court adjudicates violations of the Labour Union and Labour Disputes Act as well as cases of allegedly illegal strikes and disputes between employers and employees which the parties agree to refer to the court. The jurisdiction of the labour court in Norway is confined to disputes regarding collective agreements and industrial action. The court only has jurisdiction in individual disputes when individual workers or employers are liable for damages for breach of collective agreements or breach of a peace obligation. The labour court in Sweden is the court of first and last

instance in collective disputes over collective agreements and other labour disputes covered by the Co-Determination at Work Act.

7. Finally, in still other countries, the labour courts have jurisdiction in a wide range of matters, both individual and collective. In the Federal Republic of Germany the jurisdiction of the labour courts can be divided into two main areas: (a) civil proceedings, including disputes arising out of collective agreements or out of employment contracts and the employment relationship or disputes over trade union rights; (b) collective proceedings, including disputes in connection with the Works Constitution Act, the Co-Management Act of 1976, the election of employee representatives to supervisory boards and disputes concerning the ability to bargain collectively and the collective bargaining powers of associations. The labour court in Ireland has a wide range of competences, a number of these would fall within the competence of various government agencies in other countries. Its judicial competence includes the investigation of trade disputes and the making of recommendations for their settlement, disputes concerning Fair Employment Rules as well as deciding on appeals against recommendations of the Rights Commissioner or of Equality Officers. In Israel the regional labour courts have exclusive jurisdiction in all statutory and voluntary labour and social security matters: disputes arising out of the employment relationship, violations of safety and protective legislation, legal rights disputes between parties to collective agreements, disputes between members of employees' organisations and their organisations, matters arising out of arbitration under the General Arbitration Law, and all social security matters. The National Labour Court has jurisdiction in appeals from the decisions of the regional courts, in collective legal disputes arising out of industry-wide or national agreements as well as organisational and jurisdictional disputes between workers' or between employers' organisations. The Spanish labour courts have sole jurisdiction in the social branch or law: individual disputes over the employment contract, collective disputes of a judicial nature, the verification of the legality of collective agreements, law suits with regard to social security, claims arising out of the failure to observe statutory or other provisions in the social field which are not subject to a special procedure.

8. Following the presentation and discussion of the papers describing the various courts, the meeting went on to discuss the problem of the access of individual workers to the courts. In some countries individuals have access to the courts but in other countries the courts only accept complaints by unions. In cases where an individual worker has no access to the labour court he will have to go to his union which may or may not decide to pursue the complaint with the employer in the instances outside the enterprise. After various stages the complaint may reach the central or national level where an agreement may or may not be reached.

9. In some countries if no agreement can be reached, the union concerned will refer the case to the labour court and ask for a decision with regard to the rights of an individual worker stemming from the collective agreement. This often means that a union adopting an

individual claim will transfer it into a collective one in order to bring it before the court.

10. Another point of discussion was the question of appeals against awards of labour courts, whether inside or outside the labour court system. In a number of countries the possibility of appeal inside the labour court system does exist and the participants from those countries were of the opinion, even if it is difficult to give a general answer, that the possibility should be maintained, even where it involved several instances. It was recognised that the possibility of appeal might run counter to one of the basic reasons for the establishment of labour courts, namely the need to render decisions quickly. Nevertheless, the solution to this should not be found in abolishing appeals but rather in limiting or restricting the right of appeal, for instance by allowing appeals only on questions of law and not on facts. In one country (Spain) employers who appeal must deposit a security (caution) equal to the award of the court of first instance. It was noted that in several countries the right of appeal was guaranteed by the constitution and that other ways and means could be found to deal with the case load of labour courts.

As far as appeals outside the labour court system were concerned, many participants were of the opinion that such a possibility would undermine the basic reasons for the existence of labour courts and, in a certain sense, may be "harmful" to the prestige of labour courts. Appeals outside the system (i.e. to the supreme court) could be envisaged for constitutional questions.

11. The next point to be discussed was the relationship between labour court judges and general court judges and the advantages or disadvantages of rotation between the two systems. Some of the participants were opposed to the idea of judges rotating between labour and general courts. In several countries judges are appointed for life in one or other branch of the judicial system in which they normally remain. Transfers to another branch seldom occur. In the Nordic countries general court judges are appointed for life, while labour court judges are appointed for a fixed period (in Norway, for example, for three years). The possible consequences for the independence of the judges have never really been an issue in these countries and reappointment is often quasi-automatic. It was generally felt that when judges were appointed for a fixed period this in no way affected their independence. Some participants emphasised that full independence and security is important to judges in an area where decisions are delicate and subject to criticism. It was also stressed that the industrial relations parties had to have full confidence in the courts, that this is important to the judges and to the system as a whole.

12. The place and role of labour courts in the industrial relations system was also discussed. The conclusion was that, particularly with regard to this point, it was difficult to draw any general conclusions as the role of a labour court is closely related to the national system of industrial relations. In discussing certain national systems some points were highlighted which were of interest to most of the participants.

13. One of these points was the acceptance of decisions of labour courts. In Norway, where the labour court was established on the initiative of the social partners, the labour court under its first president made an effort to win the trust of the parties. This was important in a system where parties may opt for arbitration if they have no trust in the labour court. Nowadays the court is highly respected and the parties very rarely choose the arbitration alternative. In Sweden, where the labour court was established against the will of the trade unions (the most important political strike ever in this country was against the establishment of the labour court) from the beginning emphasis was placed on the labour court acting as a court of law in order to create respect for it. At present, it is widely accepted and respected by both the trade unions and the employers. In the Federal Republic of Germany decisions in individual cases are accepted by the social partners and the parties concerned. The acceptance of decisions in collective cases is much more difficult because here social policy considerations play an important role. The judiciary is often seen as one of the instruments of social policy. Under the present circumstances it is often tried in collective cases to further or to change policies through judicial decisions. This may constitute a danger for the independence of the courts as well as for social policy. If trust in the labour courts decreases alternative means or institutions for dispute settlements may evolve. The labour court, in particular the Federal Labour Court, has an impact on the legislator's consideration of areas in which normative action may be needed. Good laws play an important role in the long-term acceptance of the labour courts. As far as Spain is concerned, acceptance of the role of the courts exists in both individual and collective cases.

14. Related to the question of the acceptance of the decisions of the labour courts by the industrial relations parties is the problem of the acceptance by or the representation of minority organisations not normally included in the tripartite tribunals. This question is of current importance in some of the Scandinavian countries (Norway and Sweden). Very often these minority organisations, mainly trade unions not affiliated to the national confederation, do not have the same policy ideology as the majority organisation(s) and they often feel that when they come to the court they are confronted with one big enemy (employers) and a small one (the majority union). Some of these organisations have challenged the tripartite composition of the National Wages Board in Norway (with regard to which a complaint was made to the ILO) and may in the future challenge the composition of the labour court. It was suggested that in such cases it might be envisaged that the minority organisation may ask the lay members to be excused so that the professional judge(s) only will hear the case. In a few countries it is possible for the parties to request the court to take a decision without the presence of lay members.

15. Another question was the extent of use by the labour court of conciliation or mediation as an adjunct to adjudication. While in certain countries the courts refuse to conciliate or to mediate as this may be seen as harmful to the impartiality of the court, in a number of other countries the courts first try to conciliate, normally in the preliminary stage of the procedure. The labour courts in Israel, for

example, attempt conciliation at a very preliminary stage. In 1983, out of 84 collective disputes, 65 were settled by conciliation and did not even come up for hearing. It was felt that the more restraint was exercised by the courts in granting injunctions, the better the parties would accept an injunction when granted. Also in this country when an individual case is filed with the court the registrar (a legally-qualified person but not a judge) will make an effort at settlement. On average the registrars are successful in about 47 per cent of the cases. In the Federal Republic of Germany in individual cases there is an obligatory conciliation session held by the professional judge only. About 50 per cent of the individual cases are settled in such conciliation sessions. In Spain most disputes have first to go through conciliation before being submitted to the labour court. Once the case comes before the court, the judge will also try to conciliate. The obligatory conciliation procedure does not apply to social security cases. In Switzerland more than 50 per cent of the cases are settled by conciliation either before the introduction of the case or before the court. In Norway there exists a system of pre-trial conciliation procedures by the individual disputes conciliation council, which is composed of laymen and can be considered as a kind of obligatory gateway to the ordinary courts in most civil law matters, including individual labour law disputes with the exception of termination of employment disputes. As regards these latter disputes pre-trial bargaining between the parties themselves is a possibility under the relevant legislation. The conciliation council system does not apply to disputes for which the Labour Court is competent. Dispute bargaining by the parties to the collective agreement is a pre-condition for taking such disputes to the court. The problem was raised that, since the labour courts deal with legal disputes, conciliation - often involving a compromise - might be conceived as a threat to the maintenance and protection of legal rights and entitlements. However, it was widely felt that even in "legal" disputes conciliation was appropriate since the procedure often led the parties themselves to recognise the respective rights involved and, moreover, there were many instances in which there was room for a compromise which could often be the best solution, even if it did not give entire satisfaction to one or other of the parties, while the award of the judge often left a winner and a loser with a degree of bitterness. In at least one country (Spain) when the parties reach a compromise in the conciliation stage, the judge will confirm this settlement.

16. Much attention was given to the work or case load of the labour courts. The participants first tried to analyse the reasons for unduly heavy case loads. It was recognised that throughout their history there have been complaints about the slowness of (labour) courts. In extreme cases, the court may give a final and binding decision and the plaintiff may no longer be in a position to benefit from it. Among the various reasons for the increased workload of the courts the following were mentioned: (i) political changes leading to a change in social policies; (ii) a stricter application of social security schemes; (iii) budgetary problems: not enough funds available for personnel and "equipment"; (iv) new labour legislation often gives rise to a plethora of cases with regard to the interpretation of the new legislation. In some countries the number of appeal and cassation cases has also increased considerably,

which leads to an increase in the case load of the higher courts. In some of the Scandinavian countries the case load was not seen as a problem. In Sweden, for example, cases are normally decided within five months and the industrial relations parties have no complaints on this score.

17. In trying to find solutions to the case load problem it is important to make a distinction between cases of a more temporary nature (for instance an important change in legislation) and cases of a longer term nature (e.g. the economic crisis and the conflicts resulting therefrom). In many cases under the present economic circumstances it is no longer the individual worker who fights his own case but, assisted by his union, he fights for his colleagues as well. The courts have at present to deal with an increased number of cases because of the economic crisis while the number of judges is based on the case load normal for a more favourable economic situation. In several countries solutions to the case load problem have been suggested. One of these is better training (more specialised) for both professional and lay judges. Other suggestions are to reduce the number of possibilities for appeal or to reduce the number of judges sitting on labour chambers. It was, however, argued that in view of the social consequences of labour cases collegiality is very important and that only after very careful consideration could such a decision be taken.

18. The participants considered that further meetings of this type would be very useful and beneficial for labour justice in all countries concerned. Such meetings could be organised in conjunction with other international meetings or congresses. The Initiating Committee, in co-operation with the International Institute for Labour Studies and the ILO should select and prepare special themes which could be discussed in greater depth.

THE LABOUR COURT SYSTEM IN BELGIUM

by J. René RAUWS

Judge, Social Division of the Cassation Court, Brussels

The establishment of separate labour courts

Until November 1970 social legal disputes fell within the competence of a variety of courts: civil courts, courts for disputes concerning contracts of employment, administrative courts and even commercial courts.

Unity of jurisdiction and procedure was achieved by the new Judicial Code which established separate labour courts having full competence in social legal disputes. Although the labour courts are integrated in the judiciary system they are fully independent and constituted in a special way. The Belgian labour court system, as it exists now, is a compromise between two opposite trends: full autonomy outside the judiciary system, on the one hand, and full integration in the ordinary courts, on the other.

The composition of the labour courts

Labour courts are composed of judges and "judges in social cases". The former are magistrates, members of the judiciary; the latter are lay members appointed by the Minister of Labour or the Minister for the Middle Classes on the proposal of the representative trade unions and the employers' or self-employed workers' associations.

Each division of a court is composed of three members: a magistrate and two "judges in social cases", respectively nominated as an employer and an employee. However, in proceedings concerning social security for self-employed workers a division consists of two magistrates and one "judge in social cases" nominated as a self-employed worker.

The divisions of the labour courts of appeal are composed in the same way.

The structure of labour courts

A labour court of first instance, the Labour Tribunal, exists in each judicial "arrondissement". Each labour tribunal consists of at least two divisions. By royal decree a labour tribunal may be divided into sections, each having a well-defined competence ratione loci. To each tribunal is attached a special public prosecutor's department: "Arbeidsauditoraat" (in Dutch), "Auditorat du travail" (in French). The

chief of this department, the Labour Auditor ("Arbeidsauditeur"/"auditeur du travail") and his assistants are part of the Department of the Public Prosecutor ("Openbaar Ministerie"/"Ministère public"), just as the "Crown Prosecutor"; they are working under the authority of the "Prosecutor General" at the Court of Appeal. The decisions of the labour tribunals can be appealed to an appeal court of labour ("Arbeidshof"/"Cour du travail"). There are five of these appeal courts, some of them being divided into territorial sections. Each court of labour has its own special public prosecutor's department under the direction of the already mentioned Prosecutor General.

The social division of the Court of Cassation (Supreme Court) is an integrated part of the Court. It has no exclusive competence in the field of social proceedings not does its composition legally differ from that of the other divisions (civil and penal) of the Court. The only special legal provision is that five judges of the Court and one member of the Office of the Public Prosecutor at the Court have to be chosen from among the judges or public prosecutors of the labour courts. These five judges are members of the Social Division, but they are not the only ones as each division has two sections, Dutch and French being the official languages of the Court.

Jurisdiction and competence

Within the competence ratione materiae of the labour courts fall all individual legal disputes concerning labour relations, social security and special benefits, including the social security for self-employed workers as well as the social benefits for the handicapped, minimum standards of living, etc. However, collective labour disputes, such as strikes for example, do not fall within the competence of labour courts or of any other court. Although many labour and social security laws contain penal provisions, breaches of these penal provisions are dealt with by the penal divisions of the ordinary courts. Administrative penalties, however, applicable in the field of social security or social benefits - for example the loss or suspension of benefits as a penalty - fall within the competence of the labour courts.

The competence ratione loci of a labour court in labour proceedings is determined by the place where the employee is put to work. In social security and social benefits cases the competence ratione loci belongs to the court of the place of residence of the beneficiary.

All decisions of labour tribunals, even preparatory decisions, are appealable.

The special public prosecutor's departments attached to the labour courts have far-reaching rights of investigation. In all legal proceedings in which the labour courts have competence the members of the department can request the responsible authorities, including public servants and even ministers, to provide all information needed. For that purpose they can ask for help from the social inspection services.

All cases referred to a labour court concerning social security and social benefits as well as those concerning legal disputes resulting from

breaches of labour regulations or social legislation provisions must be communicated to the special public prosecutor's department under penalty of nullity of the procedure. In all these cases the labour auditor has to give his opinion and also has a right of appeal.

The rules of procedure in social proceedings are largely the same as in civil proceedings. However, the role assigned to the prosecutor's department adds an inquisitorial aspect to the lawsuit, particularly in social security and social benefits cases. As a rule court costs are low or inexistant for beneficiaries of social benefits. The assistance of a lawyer is not compulsory. Employees and self-employed workers can appear before the court represented by a proxy of a representative trade union or self-employed workers' association.

Particular problems

After an experience of 14 years few particular problems seem to exist. The question may be asked, however, if a mainly civil procedure is fully appropriate for proceedings concerning social security and social benefits cases.

THE LABOUR COURT OF FINLAND

by Jorma PELKONEN, President, Labour Court, Helsinki
and Kari-Pekka TIITINEN, Judge, Labour Court, Helsinki

Reasons for the establishment of a separate labour court

In Finland collective agreements have been concluded ever since the latter part of the nineteenth century, although they were few in number until the end of the Second World War. The first Collective Agreements Act was passed in 1924. When the Bill was under preparation, it was considered to establish a separate labour court in order to solve disputes arising out of collective agreements. For two reasons it was decided then not to establish a separate labour court: (i) the inadequate experience in the application of collective agreements and (ii) financial reasons. The Collective Agreements Act, 1924, provided that a collective agreement could include a clause referring disputes arising out of it to arbitrators, instead of to ordinary courts of law. In the practical application of the few existing collective agreements, it was quite common to resort to arbitration.

By the end of the Second World War the view of the central organisations of employers' and employees' associations with regard to the usefulness and expediency of collective agreements had come so close to each other that, between 1945 and 1947, collective bargaining between the member associations of the central organisations took place on a relatively large scale. Therefore, it became necessary to amend the Collective Agreements Act and to reconsider the need for a separate labour court. The establishment of the Finnish Labour Court, which started functioning at the beginning of 1947, was firstly influenced by the fact that ordinary courts of law with their several instances were regarded as being too slow. Secondly, ordinary courts of law were considered not to have the special expertise required in the settling of disputes arising out of collective agreements, which were thought to be difficult to solve and likely to have far-reaching consequences. Thirdly, it was estimated that a separate labour court of exceptional composition would be able to gain the confidence of the labour organisations more easily than the ordinary courts of law. Finally, the positive experiences in the other Scandinavian countries with their separate labour courts contributed to the establishment of a separate labour court in Finland.

The position of the Labour Court has become so well established that, when the Collective Agreements Act, 1974 - which is still in force - was being prepared, the necessity of having one was not even discussed.

The composition of the Court

The Finnish Labour Court is composed of a president and a legal counsellor, who act as chairmen of the Court, and of 14 other members. The Court is based on the principle of tripartism. The president, the counsellor and two other members (as well as their deputies) are appointed from among persons having the legal degree required for judges in Finland and who cannot be considered to represent either employers' or employees' interests. Eight members are appointed upon the nomination by the most representative central organisations of employers' and employees' associations. These members must have a sound knowledge of labour relations but are not required to have a law degree. Four members must be familiar with the employment relationships of civil servants, both government and local authority employees, and they are appointed upon the nomination by the public authorities (State, municipalities, etc.) and the most representative central organisations of civil servants' associations.

Both the full-time chairmen and the part-time members are appointed for a period of three years. In addition, the Labour Court may, exceptionally, include a "man from the street", if a member and his deputy are both prevented from attending and the court would not otherwise have the quorum necessary to meet. In an exceptional case like this, the chairmen must appoint a suitable and qualified person as an ad interim member of the court. Both full-time and part-time secretaries act as referendaries at the Labour Court. The court usually convenes divided into two sections with alternating membership (2+2+2). A case may also be heard and tried in a plenary session of the Court, if so required by consistency in the application of law, or by the fact that the decision to be made in a particular case may have far-reaching consequences, or for any other important reason.

The structure of the Court and of the system

An action is brought before the Labour Court by a written application for a writ, which must state (i) all the parties to the case; (ii) all the claims to be made; and (iii) the grounds for them. The writ as well as all the documents submitted by the petitioner are then officially served on the respondent who is asked to submit to the Court, within a prescribed period of time, his statement of defence in writing. The answer must contain both the material claims and the procedural arguments. After the written preparation of the case by one of the referendaries, the chairman and the referendary proceed to an oral preliminary hearing of the case. It is at this hearing at the latest that the parties to the dispute must, ordinarily, bring up all the points they intend to base their case on, submit their written evidence and name all the witnesses they intend to call during the main hearing. These written and oral preliminary hearings are aimed particularly at finding out which claims and points are disputed and which are not, so that the case can then be tried during the main hearing in one session without any adjournments.

The main hearing, which must take place without any delay after the preliminary hearings, and which is attended by all the members of the

Court or of the relevant section of the Court, is oral. The main hearing consists for the most part in the hearing of witnesses called by the parties to the case. After deliberations the Court may, immediately after the hearing, pronounce its decision. But, in practice, this is only done in cases where the dispute concerns a breach of the peace obligation and the offensive action, strike or lockout is going on during the main hearing of the case. Thus, normally, the Court convenes for a so-called deliberative session to give its final decision only after the record of the proceedings of the main hearing has been completed and is at the disposal of the Court. Then the written decision is mailed to the parties in the case.

The decision of the Labour Court is final, and it can be enforced in the manner of a judgment by an ordinary court of law. The Supreme Court of Justice may, however, be appealed to by resorting to the so-called extraordinary means of appeal (e.g. annulment and procedural complaint).

It might still be mentioned that the Finnish collective agreements, both for private employees and for civil servants, quite often incorporate a clause providing for a procedure for negotiating disputes arising out of these agreements. This procedure, which may contain two or three steps, is a form of mandatory preliminary procedure: with very few exceptions, the Labour Court leaves untried, ex officio, an application for a writ if the preliminary negotiations have not been conducted in the way agreed upon.

Jurisdiction and competence

The Finnish Labour Court has sole territorial jurisdiction, i.e. its competence covers the whole country, and there is no ordinary appeal against its decisions to a higher instance. Its material competence is limited to the so-called "legal disputes" which arise out of collective agreements, or out of the Collective Agreements Acts pertaining to these agreements, if the issue concerns:

- (1) the competence, validity, contents and extent of a collective agreement and the correct interpretation of a clause in such an agreement;
- (2) whether an act has been in accordance with a collective agreement or with the corresponding Collective Agreements Act; or
- (3) the imposition of a sanction due to a breach of any of the norms mentioned above. The Labour Court is not empowered, however, to impose a disciplinary sanction or a criminal sentence. It is only competent to impose a sanction, a compensatory fine, stipulated in the said laws. The fine is limited to a definite maximum amount, and, in many respects, it is comparable to damages.

In connection with a dispute concerning the interpretation or application of collective agreements, the Labour Court may also, if it sees fit, pass a sentence of specific performance in an individual case, provided the facts of the case are clear and undisputed. In other cases the Labour Court must advise the parties to bring their claims for

specific performance before the ordinary court of first instance concerned or to administrative proceedings.

A collective agreement, both for private employees and for civil servants, may provide that disputes falling under the jurisdiction of the Labour Court are to be settled by arbitration. But only very few collective agreements contain such a provision.

It should be clear from what has been said above that the Labour Court in Finland is not empowered to deal with disputes arising out of individual employment contracts or out of the legislation regarding employment relationships. Such disputes are under the jurisdiction of ordinary courts of law or that of administrative tribunals. But the said tribunals may ask for an expert opinion from the Labour Court in a matter which requires special knowledge of collective bargaining or industrial relations. But the courts or tribunals are not bound by the opinion of the Labour Court.

The activities of the Finnish Labour Court

Table 1. Proceedings of the Labour Court

Actions initiated by	1947-56	1972-81	1982	1983
Employers	54	644		
Employees	73	608		
Total	127	1,252	219	225

Table 2. Subject matter of actions

Year	Indus- trial peace	ers ¹	ees ²	Breach of collective agreement	Other cases ³	e.o. ⁴
1972	44	44	-	13	28	
1973	41	38	3	25	33	
1974	53	48	5	18	32	
1975	73	65	8	8	23	6
1976	63	53	10	24	30	3
1977	54	51	3	23	46	9
1978	37	35	2	18	29	15
1979	110	105	5	43	31	14
1980	98	93	5	24	46	4
1981	109	93	16	32	44	6
Total	682	625	57	228	342	(57)

¹ers = actions initiated by employers. ²ees = actions initiated by employees. ³Interpretation of the collective agreement, civil servants' collective agreements, etc. ⁴e.o. = expert or advisory opinions.

Table 3

Year	Industrial disputes	Industrial peace actions in LC, brought by ers	Working days lost per worker affected
1972	849	44	2.0
1973	1,009	38	3.7
1974	1,788	48	1.2
1975	1,530	65	1.3
1976	3,282	53	2.6
1977	1,673	51	3.2
1978	1,237	35	0.8
1979	1,753	105	1.1
1980	2,238	93	3.9
1981	1,612	93	1.3

THE ORGANISATION OF LABOUR COURTS IN FRANCE

by Pierre VEILLIEUX

President, Social Chamber of the Cassation Court, Paris

The settlement of individual labour disputes is entrusted at least in the first instance to a special and specialised individual disputes board known as the Conseil de prud'hommes.

Reasons for the establishment of individual disputes boards

From the standpoint of judicial policy the existence of these special boards is attributable to the desire to allow plaintiffs to bring their cases before judges who are particularly sensitive to labour problems by virtue of their own occupational activity or of the nature and subject matter of the disputes brought before them.

From the strictly political point of view the boards reflect the desire to democratise legal proceedings, both by the manner of appointment of the judges (election) and by the requirement that they belong by occupation to one of the various sectors of the economy. Consequently, each individual disputes board is divided into five sections: industry, commerce and commercial services, agriculture, miscellaneous activities and management. Unlike the first four sections, the management section is defined by the function rather than by the occupation exercised.

Composition of individual disputes boards

Individual disputes boards consist exclusively of judges elected by their peers and there are no career judges. The electoral colleges are very broad-based, including all persons from 16 years onwards, foreign workers as well as unemployed persons. To be eligible persons must at least have reached the age of 21 years, have the French nationality and not have been convicted of any offence entailing the removal of their name from the electoral rolls. Pensioners are eligible for six years after ceasing their occupational activity.

Election is by proportional representation according to the highest average number of votes. Members of the boards are elected for six years, half of the members being replaced every three years.

Each board is a joint body consisting of equal numbers of workers and employers. The (conciliation and judicial) committees within each section also comprise an equal number of employers and workers. The

president of the board, who is elected for one year, is chosen alternatively from among the worker and the employer members.

When, because of the joint nature of the board, there is a split vote, the casting vote is given to a judge of the competent court of first instance, i.e. a career judge. This is in fact a not significant departure from the principle of joint representation.

The members of the individual disputes boards enjoy a special status protecting them from discriminatory action by their employer.

Proceedings and structure of the judicial system

The individual disputes boards are part of the hierarchy of judicial jurisdictions. For individual disputes the board is the jurisdiction of first instance and the parties to the dispute may not opt for another jurisdiction. They are, however, permitted to seek a compromise.

Each board or section of a board consists of:

- a conciliation committee;
- a judicial committee.

All disputes first have to be submitted to the conciliation committee consisting of one employer member and one worker member. The parties are convened by letter by the secretariat; they may be assisted but must appear in person. The minutes of the proceedings are drawn up indicating whether there is agreement or disagreement. An interim decision may be reached against which an appeal may be lodged only in conjunction with the judgement as to the substance.

In case of disagreement the parties are convened by letter to appear before the judicial committee. In the event of a split vote, the case is referred to a subsequent sitting of the same committee under the presidency of the judge of the court of first instance.

If the amount of the claim in the dispute brought before the individual disputes board exceeds its competence in the last instance, the parties may appeal. The appeal is brought before the common law Court of Appeal that is competent to hear appeals against decisions handed down in the first instance by all the judicial jurisdictions within its territorial competence.

The Court of Appeal is therefore not a specialised jurisdiction, though one division of the Court of Appeal is generally specialised in labour lawsuits.

All decisions handed down in the last instance are open to appeal to the Supreme Court on a point of law. The Supreme Court of Appeal (Cour de cassation), the competence of which is national and unique, is the highest hierarchical jurisdiction. A division of the Supreme Court known as the Social division rules on appeals against decisions handed down in respect of individual labour disputes.

Competence of individual disputes boards

The competence of the individual disputes board extends to all individual differences arising out of an individual labour contract, regardless of the occupation and regardless of the amount of the claim.

Though it excludes collective labour disputes, this definition is extremely broad and the individual disputes board can therefore be said to be the common law judge in such matters.

However, its competence does not extent to:

- disputes arising out of the application of social security legislation;
- disputes arising out of contentious electoral matters connected with occupational elections (staff delegates and members of works committees);
- disputes connected with bankruptcy proceedings (liquidation).

THE LABOUR JURISDICTION IN THE FEDERAL REPUBLIC OF GERMANY

by Otto KISSEL

President, Federal Labour Court, Kassel

1. General

The judicial system of the Federal Republic of Germany is characterised by five independent areas of jurisdiction which are laid down in the Constitution (article 95 of the Basic Law):

- ordinary jurisdiction (general civil cases, criminal cases and discretionary jurisdiction);
- administrative jurisdiction;
- tax jurisdiction;
- labour jurisdiction; and
- social jurisdiction.

The assignment of cases to particular areas of jurisdiction is not expressly provided for in the Constitution but is determined in accordance with this basic division in individual Acts. The five areas of jurisdiction are of equal value and rank. The authorities in each area themselves decide whether they are competent or not, and this decision is binding upon the authorities in the other areas of jurisdiction.

Appeals may be lodged with the Federal Constitutional Court if judicial decisions are deemed to violate the Constitution. In the event of divergent decisions being taken by the different higher federal courts in the various areas of jurisdiction a final decision is taken by the Common Bench of the higher federal courts.

2. Jurisdiction of the labour courts

The jurisdiction of the labour courts is laid down in an extensive list in the Labour Courts Act. A distinction should be drawn between civil and collective proceedings.

2.1 Jurisdiction in civil proceedings

2.1.1 Civil proceedings between parties to a collective agreement (trade unions and employers' associations or employers with bargaining powers) or between such parties and third parties, arising out of collective agreements or respecting the operativeness or otherwise of collective agreements, or in respect to unlawful acts where the matter

relates to industrial strife or to a question of freedom of association, including the right to establish associations.

The labour courts also have jurisdiction in civil proceedings between trade unions and employers in respect of the union's right of access to the undertaking for purposes of recruitment but not, for example, in respect of disputes concerning membership, such as the expulsion of a union member from a union.

2.1.2 Civil proceedings between employees and employers arising out of the contract of employment or respecting the operativeness or otherwise of a contract of employment, or relating to negotiations prior to, or obligations subsisting after, a contract of employment and civil proceedings in respect of unlawful acts connected with the employee's employment and employment documents. The labour courts therefore have jurisdiction in all individual civil proceedings between employees and employers connected with the employment relationship. Important examples in practice are claims relating to wages, protection against dismissal, leave, employment records and compensation. Under the Labour Courts Act the term "employee" means any wage-earning or salaried employee, any person employed for the purposes of vocational training, a person employed in home work and a person placed on the same footing, and any other person who by reason of his economic dependence must be regarded as being equivalent to an employee. The term does not cover, for example, a public servant who initiates proceedings under public law against his official employer or a severely disabled person who wishes to bring an action against the central welfare office in respect of the office's agreement to his dismissal.

2.1.3 Civil proceedings between employees arising out of group employment, or in respect of any unlawful act occurring in connection with their employment.

2.1.4 The labour courts also have jurisdiction, for example, in respect of claims by employees or their survivors to payment in the event of bankruptcy and actions involving provident, relief and pension funds concerning matters for which no provision is made under public law.

2.1.5 Actions other than labour actions may also be brought in the labour courts if the claim has a direct legal or economic connection with civil proceedings already commenced or simultaneously brought in a labour court. In virtue of an agreement civil proceedings between bodies corporate under private law and their representatives (for example, an action brought by a joint stock company against a member of its managing board) may also be brought in the labour courts.

2.2 Jurisdiction in collective proceedings

2.2.1 Matters arising in connection with the Works Constitution Act, for example in respect of co-management by the works council or the validity of a decision given by the conciliation board.

2.2.2 Matters arising in connection with the Co-management Act of 1976 and the Works Constitution Act of 1952 concerning the election of employees' representatives to the supervisory board and their removal.

2.2.3 Decisions in respect of the ability to bargain collectively and the collective bargaining powers of an association (trade union, employers' association). The ability to bargain collectively means the ability to conclude collective agreements as specified in the Collective Agreement Act.

2.3 Arbitration tribunals

Arbitration tribunals may give decisions in the place of labour courts only in exceptional cases. Provision is made for arbitration only in respect of civil proceedings between parties to collective agreements arising out of collective agreements or respecting the operativeness or otherwise of collective agreements and disputes arising in connection with the employment relationship, where the persons covered by the collective agreement are stage, screen or variety artists or are members of a ship's crew, and only when the employment relationship is governed by a collective agreement and provision is made in the collective agreement for a decision to be given by an arbitration tribunal.

2.4 Mediation

It is not permitted for the State, even through the courts, to mediate in the event of industrial strife as this would contradict the basic principle of autonomy in collective bargaining. Agreements reached through mediation come under the provisions of private law.

3. Structure of the labour courts

3.1 Local labour courts

The local labour courts have jurisdiction in all labour cases as courts of first instance. The local labour courts give decisions through divisions, each of which is composed of a judge who acts as chairman and two labour judges. Chairmen are appointed for life and are personally and materially independent. The labour judges are appointed by the central Land labour authority for a period of four years from the candidate lists submitted by employers' associations, trade unions, independent employees' associations having social or occupational objectives and public corporations. Directors and managers who are entitled on their own responsibility to engage employees for the undertaking or have been given full power of representation or a general authority are eligible for appointment as employers' assessors. The composition of the divisions is established on an equal basis with one labour judge from the employees' side and one from the employers' side in each case.

3.2 State (Land) labour courts

The state (Land) labour courts have jurisdiction as courts of second instance. They are exclusively courts of appeal in respect of decisions given by a local labour court which may be lodged on points of law (Berufung) in the case of civil proceedings (2.1 above) and through a petition for review (Beschwerde) in the case of collective proceedings.

An appeal on points of law is subject to certain restrictions and may only be made if a local labour court has declared such an appeal permissible or if the case is an action in respect of a pecuniary claim for an amount in excess of 800 DM.

The composition of the state (Land) labour courts is the same as in the case of the local labour courts.

3.3 Federal Labour Court

The Federal Labour Court established at Kassel has supreme jurisdiction in labour cases as the court of the last instance. An appeal on law (revision) may be made against a judgement of a state (Land) labour court in respect of an appeal on facts of law (Berufung) and a petition for review on law (Rechtsbeschwerde) may be made against a decision given by a state (Land) labour court in respect of a petition for review (Beschwerde). The Federal Labour Court gives decisions only in regard to questions of law and must abide by the decisions given by the lower labour courts.

An appeal on law may only be made if it has been declared permissible in the judgement of a state (Land) labour court. This is possible only if a case involves matters of principle or if the judgement of a state (Land) labour court diverges from the judgement of the Federal Labour Court or another state (Land) labour court. The same applies to a petition for review on law.

The Federal Labour Court gives decisions through benches (Senate) which are competent to act with one federal judge acting as chairman, two judicial assessors and one federal labour judge from the employees' side and one from the employers' side. The federal labour judges are appointed by the Federal Minister for Labour and Social Affairs for a period of four years, also from the candidate lists submitted by the associations. They must have attained the age of 35 years, have special knowledge and experience in the fields of labour law and industrial life and have been assessors in a labour court for four years or more.

As in the case of all higher courts, the Federal Labour Court has a Great Bench (Grosser Senat). If on a question of law one bench is unwilling to follow the ruling of another bench or of the Great Bench the question is referred to the Great Bench for a decision. The bench which gives a ruling may refer any question involving matters of principle to the Great Bench where, in its opinion, a decision is necessary for the evolution of law or uniformity of judicial practice. The Great Bench consists of the President of the Federal Labour Court, the senior of the

bench presidents, four federal judges, two federal labour judges from the employees' side and two from the employers' side.

4. Judges

All bodies with jurisdiction in labour cases are composed of judges and labour judges who have the same powers and the same duties. In particular, they enjoy unrestricted judicial independence.

5. Proceedings

5.1 In the labour courts civil proceedings (2.1 above) are conducted essentially in accordance with the Civil Procedure Code while collective proceedings (2.2 above) are conducted in accordance with a special procedure.

5.2 Rapid disposal of business: in all proceedings and in all courts the rapid disposal of business is a requirement under the law.

5.3 All proceedings are characterised by the desire of the legislator wherever possible to reach an amicable settlement. Provision has therefore been made for conciliation proceedings before actions are brought in courts of first instance. It is in any case the judge's duty in all proceedings to attempt to bring about an amicable settlement.

5.4 Proceedings are characterised by the low level of costs. Legal costs are considerably lower than in comparable cases under the general civil procedure and no legal costs are charged in some cases. Special rules other than those under the general civil procedure also apply in respect of counsel's fees in some cases.

THE NATIONAL LABOUR COURT OF ICELAND

by Bjarni K. BJARNASON
President, National Labour Court, Reykjavik

Introduction

The National Labour Court in Iceland was established in 1938 with the enactment of the Labour Union and Labour Disputes Act No.80, which is still in force. This was the first time that such a court with sole territorial jurisdiction was established. The Act decided that the seat of the Court was to be in the capital of Iceland, Reykjavik.

Composition of the Court

The Court is composed of five judges. Two of the judges are appointed by the Supreme Court of Iceland and one of them is appointed by the Supreme Court as the President of the Labour Court. One judge is appointed by the Minister of Social Affairs from among a group of three persons nominated by the Supreme Court.

One judge is appointed by the Federation of Employers and another judge is appointed by the Labour Union.

If a dispute concerns civil servants or banking employees, their respective unions appoint a judge and the same is done by the Minister of Financial Affairs or the boards of the state-owned banks. These latter judges replace the judges appointed by the Federation of Employers and the Labour Union for the particular case concerned. In certain other cases a similar procedure may be used. Substitute judges who act as member of the Court in case of a vacancy are appointed by the same parties that appointed the titular judges.

Procedure

Each case is tried by a panel of five judges. The judges appointed by the Supreme Court and the Minister of Social Affairs hear every case which is brought before the Court.

It is a civil duty to take a seat in the Labour Court. If an appointed judge or his substitute for one or another reason are unable to take their seat in the Court, the party which appointed them shall appoint another substitute. In case the appointing party fails to do so, the President of the Labour Court shall appoint a judge to fill the vacant seat.

In general the Labour Union and the Federation of Employers will represent their members before the Court. Associations not affiliated to the Labour Union or the Federation of Employers will represent themselves. Individual persons, who are not a member of a federation or a union, will represent themselves. In case the Federation or the Union refuses to institute a litigation on behalf of a certain party, that party can institute a litigation on his or her own capacity. However, before that party can issue a summon, it has to prove to the President of the Labour Court that the federation or union concerned refused to institute the litigation.

A dispute that falls within the competence of the Labour Court cannot be brought before the general courts of law.

The President of the Court decides when a case shall be set down for trial; he issues summons in the name of the Court. Each summon contains a detailed description of the facts in case, the claims presented by the plaintiff as well as the way in which the plaintiff intends to prove his allegations.

When registering the case, the plaintiff presents and delivers the summon, a complaint and all other documents necessary to support his claim. The defendant then gets a brief delay to hand in his answer to the charges and claims made by the plaintiff. If deemed necessary by the parties, and upon approval by the Court, the parties can get an additional delay to obtain further documents and evidence to present to the Court. At the end of this delay the Court decides when the trial will take place. The pleadings before the Court are generally oral. In particularly complicated cases, the Court may decide to have written pleadings. During the oral pleading the representatives and witnesses of the parties testify and finally the counsels deliver their pleadings. The Court normally tries to pronounce its judgement within ten days from the hearing. This is in line of the provision of the Act of 1938 that every case referred to the Labour Court shall be tried and concluded as fast as possible. Under extraordinary and exceptional circumstances it has happened that the procedure has been delayed for several months.

It can be said that the procedures of the Labour Court are in principle the same as those of the ordinary lower courts. There are a few exceptions such as the provision of article 56 of the 1938 Act which imposes a duty on the Court to elucidate every case as thoroughly as possible.

Functions of the Court

The main functions of the Labour Court are:

- (1) to adjudicate disputes concerning violations of Act No. 80 of 1938 as well as cases concerning losses suffered as a consequence of an illegal strike;
- (2) to adjudicate cases of violations of a contract of employment or disputes concerning the interpretation and validity of such an agreement;

- (3) to adjudicate disputes between employers and employees, where the parties to the dispute have agreed to refer the dispute to the Labour Court. The institution of a litigation in such a dispute is subject to the consent of at least three members of the Labour Court.

Appeals

The judgements and decrees of the Labour Court are final and, in principle, not subject to appeal. Within one week from the pronouncement of a judgement or decree an appeal to the Supreme Court is possible under the following circumstances:

- (1) when the Labour Court has rejected to hear a case or when it has denied a request for injection;
- (2) an appeal for nullifying a judgement when it is alleged that the Labour Court adjudicated without having jurisdiction;
- (3) decisions of the Labour Court concerning the obligation of a person to give evidence before the Court and the imposition of fines by the Court are also appealable.

Few decisions of the Labour Court have been appealed to the Supreme Court of Iceland. In most of these cases the question of the jurisdiction of the Labour Court has been the ground for appeal.

The State bears the costs of the Court, including the salaries of the judges.

THE LABOUR COURT IN IRELAND

by Maurice P. COSGRAVE
Chairman, Labour Court, Dublin

Industrial Relations Acts, 1946, 1969 and 1976

1. The Labour Court was established by the Industrial Relations Act, 1946. Provisions of that Act relating to the Court's constitution and operations were amended by the Industrial Relations Act, 1969 and the Industrial Relations Act, 1976. The Court has also been allotted certain functions under the terms of the Anti-Discrimination (Pay) Act, 1974, and the Employment Equality Act, 1977.

2. The Court at present consists of a chairman, three deputy chairmen and eight ordinary members, all of whom are appointed by the Minister for Labour. Further deputy chairman and ordinary members are provided for in the legislation if they are considered necessary. The eight ordinary members are nominated for appointment by organisations representative of workers' and employers' trade unions, and are required not to hold any office or employment which would prevent them from being at all times available for the work of the Court. The chairman is required to devote his full time to the work of the Court.

3. When considering any matter, the Court may consist of the chairman and all the ordinary members or a chairman (who may be one of the deputy chairmen, as explained below) and two ordinary members (one workers' and one employers' representative).

4. As a help towards the speedy dispatch of business the chairman may group the Court into four divisions. A division is comprised of a chairman and two ordinary members, one of the latter being representative of workers and the other of employers. The chairman of a division may be one of the deputy chairmen who, when chairing that division, has all the power of the chairman. In practice, the Court almost always works in four divisions.

5. The functions of the Labour Court may be stated briefly as follows:

- (1) the provision of an industrial relations (conciliation) service;
- (2) the investigation of trade disputes and the issue of recommendations for their settlement;

- (3) the registration and variation of certain agreements;
- (4) the establishment and servicing of joint labour committees and the ratification of wages and conditions of employment proposed by these committees;
- (5) the provision of a chairman and/or secretaries for joint industrial councils;
- (6) the making of fair employment rules (if requested to do so);
- (7) fixing (non-binding) standard wage rates for an area;
- (8) deciding on appeals in disputes in which the recommendations of a rights commissioner have been rejected;
- (9) the provision of the services of an equality officer to investigate claims concerning discrimination in pay and/or employment, and deciding on appeals against the equality officers' recommendations.

6. Investigations of disputes by the Court. As explained above, the Court may, at present, consist of nine or three persons for the consideration of any matter. Only the members of a particular Court have the right to vote on the question before it. (Thus in a Court of three, comprising the chairman and two ordinary members neither the deputy chairman nor the other six ordinary members have the right to vote.)

7. It is unlikely that the members of the Court considering a dispute will always be unanimous in their decision. To deal with this, Section 20(3) and (4) of the 1946 Act provide that, where the members of the Court are unable to agree upon the determination of the question before it,

- (a) if the majority of the ordinary members agree upon the determination of the question, the question shall be determined accordingly;
- (b) if the majority of the ordinary members do not agree, but a majority of all the members agree, the question shall be determined accordingly;
- (c) otherwise, the question shall be determined in accordance with the opinion of the chairman.

8. The decision of the Court shall be pronounced by the chairman or such other member as the chairman shall authorise and no other opinion whether assenting or dissenting shall be pronounced, nor shall the existence of any such other opinion be disclosed.

9. The formality of the Court's proceedings is reduced to a minimum but the Court may:

- (a) require witnesses to attend before it;
- (b) examine on oath the witnesses attending before it;

- (c) require any such witness to produce to the Court any document in his power or control.

These provisions are rarely used.

10. Section 67 of the Industrial Relations Act, 1946, empowers the Labour Court to investigate trade disputes. This section also enumerates certain circumstances in which the Court should not carry out an investigation viz:

- (a) a trade dispute between persons who are represented on a registered Joint Industrial Council unless (a) the Council so requests or (b) the Court is of opinion that the dispute is likely to lead to a stoppage of work;
- (b) a dispute in relation to which there is an agreement in force between the parties in dispute which provides another method of terminating the dispute, unless the Court is of the opinion that the dispute is likely to lead to a stoppage of work; and
- (c) a dispute between persons to whom a registered employment agreement applies concerning matters to which the agreement relates unless (a) a party to the agreement so request or (b) the Court is of the opinion that the dispute is likely to lead to a stoppage of work.

11. While Section 67 of the Industrial Relations Act, 1946, empowers the Labour Court to investigate trade disputes it does not impose any obligation on the Court to investigate, and a separate decision to investigate or not is taken by the Court in each case.

12. Sections 18 and 20 of the Industrial Relations Act, 1969, introduced certain further provisions relating to investigation of disputes by the Court. These are, in the main, as follows:

Section 18: the Court is precluded from investigating unless the parties to the dispute request it to do so, and then only if an industrial relations officer certifies that conciliation had failed to settle the dispute unless exceptional circumstances exist.

Section 20: the Court is required to investigate a dispute in private and with such priority as is feasible when the union or both parties agree in advance to accept the Court's recommendations.

13. Under Section 8 of the Industrial Relations Act, 1969, Court investigations must be held in private unless one of the parties concerned request a public hearing. In public investigations the Court has the power to hear any part or parts of the case in private.

14. The procedure and general atmosphere prevailing at the hearing, by the Court, for the purpose of the investigation of a trade dispute, bears little resemblance to the formalities of a court of law. Formalities are reduced to a minimum. Written submissions are normally

made, by both parties, before the Court investigation commences. These written submissions are read at the Court hearing by the main spokesman for each side, but the fact that certain aspects of the dispute may not be covered in the written submission does not prevent a party from covering these additional aspects by way of a supplementary oral submission. Any points on which clarification or elaboration is required will be dealt with by way of questions by members of the Court. The more fully facts and arguments are given in the written and oral submissions the less need there will be for members of the Court to put questions. Written submissions are required to be in the hands of the Court a few days before the hearing.

Labour Court recommendations

15. The Court, having investigated a trade dispute, may make a recommendation setting forth its opinions on the merits of the dispute and the terms on which it should be settled. The Court is no longer obliged, as it was prior to the 1969 Act, to have regard to the public interest, the promotion of industrial peace, the fairness of the terms to the parties concerned and the prospects of the terms being acceptable to them though, of course, the Court may consider any or all of these matters.

16. Recommendations issued by the Court normally take the form of a summary of the case submitted by each party to the dispute, followed by the Court's recommendation with regard to a basis for settlement. On occasions, the Court also makes oral recommendations at the end of a hearing or issues its recommendations by letter. There has, from time to time, been criticism of Court recommendations because they sometimes fail to set forth fully the Court's opinion on the merits of the dispute. It has been argued that, if the reasons for the Court's recommendation were in every case fully stated, it would encourage and stimulate a more intelligent consideration of Court recommendations by both sides of industry.

17. Except in the cases referred under Section 20 of the 1969 Industrial Relations Act, appeals against rights commissioners' recommendations and appeals against equality officers' recommendations, the Court's recommendations are not legally binding on the parties. The parties to a dispute will, however, be expected to give very serious consideration to the terms of the settlement, recommended by the Court, in any case, particularly now, as the Court is normally precluded from investigating unless both parties request it to do so. This is in complete accord with the principle of free collective bargaining which underlies the establishment of the Labour Court. The Court's duty is to give a considered opinion as to the terms on which a particular dispute should be settled but the responsibility for the settlement rests at all times with the parties themselves.

18. The success of the Labour Court rests to a very large degree on the confidence which employers and workers repose in it. The following figures show the number of cases coming before the Court in recent years:

Year	Number of recommendations, reports and decisions issued
1974	365
1975	403
1976	474
1977	462
1978	546
1980	576
1981	802
1982	975
1983	1,045

Of the 510 recommendations issued between 1st January 1979 and 31st December 1979, the Court had received (up to 20 February 1980) a notification of acceptance or rejection from both parties in only 112 cases (21.9%) 64 (57.1%) were accepted by both sides and 48 (42.9%) were accepted by employers' side and rejected by the trade union side. In the vast majority of cases (398 or 78% of cases) either no reply was received from one side or the other or both sides as regards acceptance or rejection of recommendations.

19. Rights commissioners. Under the 1969 Act the Minister for Labour has power to appoint rights commissioners who, except in certain cases (such as rates of pay, hours of work or annual leave of a group of workers), are empowered to investigate disputes. This service is outside the ambit of the Labour Court. However, a party to a dispute in relation to which a rights commissioner has made a recommendation may appeal to the Court against the recommendation and the parties to the dispute are then bound by the decision of the Court.

20. Equality officers. Under the provisions of the Anti-Discrimination (Pay) Act, 1974, and the Employment Equality Act, 1977, disputes concerning equal pay entitlements and discrimination in employment on grounds of sex or marital status may be referred to an equality officer of the Labour Court for investigation and recommendation.

21. During the course of an investigation the equality officer examines written submissions made by the parties, meets the parties and visits premises to inspect work in progress. For the purpose of carrying out investigations the equality officers are empowered to enter premises, examine records or documents, seek information and inspect work in progress in the premises. Any person who obstructs an equality officer in his/her investigation shall be guilty of an offence and liable to a substantial fine.

22. Following an investigation the equality officer issues a recommendation to the parties and to the Labour Court. Either party to the dispute may, within 42 days from the date of the equality officers' recommendation, appeal to the Labour Court against the recommendation or for a determination that the recommendation has not been implemented. The Court's findings in such cases are binding on both parties. A more detailed explanatory memorandum on the Anti-Discrimination (Pay) Act, 1974, is available on request.

23. Industrial Relations Service (Conciliation). The reference in the Industrial Relations Act, 1946, to conciliation are few and brief. Section 16 of the Act empowered the Court to appoint officers to act as conciliation officers and Section 69 empowers the chairman of the Court, before the Court undertakes the investigation of a trade dispute, to appoint a conciliation officer to act as mediator in the dispute for the purpose of effecting the permanent settlement thereof or such temporary settlement as will ensure that no stoppage of work shall occur pending the investigation of the dispute.

24. Section 6(2) of the 1969 Act repeals Section 16 of the original Act, retitles these officers "industrial relations officers" and provides as follows":

"Industrial relations officers shall perform any duties assigned to them by the Court or the chairman, and, in particular, they shall assist in the prevention and settlement of trade disputes and in the establishment and maintenance of means for conducting voluntary negotiations between employers and workers either generally or in particular industries or particular areas or between particular employers and their workers."

25. The nature of the Conciliation Service is that it be voluntary and informal and consequently it has a considerable appeal for both employers and workers when they find they are unable to reconcile their different viewpoints by direct discussion. It is a natural extension of the direct negotiations normally carried on by both sides of industry. Because there is no element of compulsion in it, its efficiency will depend almost entirely on the measure of co-operation which is forthcoming from the parties themselves.

26. The normal procedure followed at conciliation conferences is for the industrial relations officer to preside in the first instance at a joint meeting of the parties, at which each side states its point of view on the issues involved. Unless the dispute is of a very simple nature the industrial relations officer will find it necessary to have private discussions with each side separately. Generally speaking it is as a result of the talks at these "side conferences" that most progress is recorded, because the parties are prepared, to some extent at least, to reveal their exact and true positions in the knowledge that their confidence will not be abused. After these "side conferences" the industrial relations officer will have a clearer picture of what might settle the dispute and from then on he will try to guide the parties along certain lines or he may be in a position to come forward with a solution which he can persuade each party to the dispute to accept.

27. The usefulness of the conciliation service provided by the Court can be judged from the number of disputes in which conciliation conferences were held and the percentage of these which resulted in settlement.

Year	Number of disputes in which conciliation conferences were held	Number and percentage of disputes settled at Conciliation	
1971	628	429	68%
1972	713	443	62%
1973	855	487	56%
1974	951	646	68%
1975	1,108	576	52%
1976	1,071	581	54%
1977	1,175	638	54%
1978	1,288	651	51%
1979	1,301	633	49%

28. Those conferences which did not result in settlement cannot be regarded as having failed completely as almost all of them were subsequently investigated by the Court and, in a majority of cases, the Court recommendations were accepted without either party having recourse to industrial action.

29. Industrial relations procedures. As indicated in the 1969 Act, the industrial relations officers, whenever possible, are available to advise and assist in the setting up of suitable industrial relations procedures.

30. Joint industrial councils. They are negotiating bodies for particular industries or parts of industries. They are voluntary associations in which one side represents employers and the other side unions. They usually meet in the Court's premises and the Court provides a chairman who is an industrial relations officer, and a secretary. Joint industrial councils may be registered with the Court. Their rules provide that before resort is had to industrial action the matter shall be considered by the Council.

31. Joint labour committees. Under the Industrial Relations Act, 1946, the power to set up joint labour committees was transferred from the Minister for Industry and Commerce to the Labour Court. The Court is empowered to establish a joint labour committee provided that it receives an application from the Minister for Labour or a trade union or any organisation or group of persons claiming to be representative of the workers or employers concerned. The Court must first hold an inquiry into such an application, giving an opportunity to parties to present observations on the proposals. As application for the establishment of a joint labour committee must be on the grounds that there is substantial agreement between the workers and employers to such establishment or that

the existing machinery for the effective regulation of wages and conditions of employment of the workers concerned is inadequate or that, having regard to existing rates of wages and conditions of employment, it is expedient that a joint labour committee should be established. The Court may also abolish or vary the field of operation of an existing joint labour committee on the application of the Minister for Labour, a trade union or any organisation or group of persons representative of the workers or employers concerned.

32. A joint labour committee consists of equal numbers of representatives of employers and workers appointed by the Court and a chairman and independent members appointed by the Minister for Labour. In the case of the Agricultural Workers' Joint Committee, which was set up under the terms of the Industrial Relations Act, 1976, the representative members are appointed by the Court from a panel of nominees presented by the Minister for Labour with the consent of the Minister for Agriculture.

33. A joint labour committee may submit to the Court proposals for fixing the minimum rates of remuneration of workers or for regulating their conditions of employment. Where the Labour Court receives from a joint labour committee proposals with regard to fixing of remuneration or conditions of employment it will, unless it refers the matter back to the committee for further consideration, publish notice of the proposals. Objections to the proposals may be lodged within 21 days. If any objections are made, they are first considered by the joint labour committee and the committee may then submit the proposals, amended or otherwise, for confirmation by the Court. The Court may either make an Employment Regulation Order giving effect to the proposals from such date (subsequent to the date of the Order) as it thinks proper and specifies in the Order, or it may refuse to make the Order.

34. A joint labour committee may not submit proposals revoking or amending an Employment Regulation Order unless the Order has been in force for at least six months.

35. When proposals submitted by a joint labour committee are confirmed by the Court, through the making of an Employment Regulation Order, they become statutory minimum remuneration and statutory conditions of employment for the workers concerned. Employers are then bound under penalty to pay rates of wages and observe conditions of employment not less favourable than those prescribed.

36. An employer of workers to whom an employment regulation order applies must keep records of wages, payment, etc. and must retain these records for three years. He must also post up prescribed notices in his factory setting out particulars of the statutory rates of remuneration and conditions of employment.

37. The provision of employment regulation orders are enforced by inspectors appointed for the purpose by the Minister for Labour. These inspectors have power to enter premises, inspect wage sheets and other records, examine the employers and workers concerned and institute proceedings (if necessary).

38. Registered agreements. An employment agreement is an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made, at a meeting of a registered joint industrial council, between members of the council representative of workers and members of council representative of employers.

39. Under the Industrial Relations Acts an employment agreement, when registered by the Labour Court, becomes legally binding not only on the parties to it but also on others who are not parties to it but who are in the class, type or group to which the agreement is expressed to apply.

40. The application to the Court for registration of an agreement may be made by any party to it but the Court will not grant registration unless it is satisfied that:

- (a) in the case of an agreement to which there are two parties only, both parties consent to its registration and, in the case of an agreement to which there are more than two parties, there is substantial agreement amongst the parties representing the interests of workers and employers, respectively, that it should be registered;
- (b) the agreement is expressed to apply to all workers of a particular class, type or group and their employers where the Court is satisfied that it is normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group;
- (c) the parties to the agreement are subsequently representative of such workers and employers;
- (d) the agreement is not intended to restrict unduly employment generally or the employment of workers of a particular class, type or group or to ensure or protect the retention in use of inefficient or unduly costly machinery or methods of working;
- (e) the agreement provides that, if a trade dispute occurs between workers to whom the agreement relates and their employers, a strike or lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement; and
- (f) the agreement is in a form suitable for registration.

41. Employers and workers who are not parties to the agreement, but may be affected by it if it is registered, must, of course, be given an opportunity of knowing about it and, if they so wish, objecting to the registration. The Court must therefore direct the parties to publish specified particulars of the agreement. Exactly how this is to be done will be decided by the Court in each case; it may, for example, require advertisement in the national and local newspapers, giving an indication of the contents of the agreement and indicating that copies of it may be obtained on request from the Labour Court.

42. A period of at least 14 days or longer, if the Court considers it necessary, must elapse between the publication of particulars of the agreement and the final stage of the registration procedure. If by the end of that period no objection has been received, the Court may proceed to register the agreement. If an objection is received within that time, the Court must (unless it considers the objection frivolous) hold a sitting to hear the objectors and any other persons concerned who wish to give their views. The Court has generally followed the practice of arranging a sitting to consider each application for registration even where no objections are raised within the specified period.

43. Enforcement of the provisions of a registered agreement may be effected in either of two ways. Contracts of employment are deemed to have been amended to comply with the agreement, so that if an employer pays lower wages or gives less favourable conditions of employment than the agreement requires, his workers would have the ordinary civil remedies for a breach of contract. The Act also provides for enforcement through workers' trade unions and the Labour Court. A union may complain to the Court that an employer has failed to comply with the agreement. If the Court is satisfied, after hearing all persons interested, that the complaint is well founded, the Court may make an order directing the employer to comply. If the employer falls to obey the direction contained in the Order he is guilty of an offence and renders himself liable, on summary conviction, to a fine of up to 100 with a further fine of up to 10 for every day during which the offence is continued.

44. The 1969 Act provides that an employer may complain about another employer who is not acting in conformity with the agreement. The registration of an employment agreement imposes certain limitations on the freedom of action of the trade unions of workers affected by the agreement, even if a particular union was not itself a party to the making of the agreement.

Employers have a right of complaint to the Labour Court corresponding to the workers' right. If the Court is satisfied that a workers' union is promoting or assisting out of its funds a strike which "is in contravention of the agreement and which has for its object the enforcement of a demand on an employer to grant to a worker remuneration or conditions other than those fixed by the agreement", the Labour Court may make an order directing the union to refrain from continuing to use its funds in maintaining the strike. If a person to whom this direction is given fails to obey, he is guilty of an offence and is liable, on summary conviction, to the same fines as an offending employer.

Although there is limitation to the extent indicated on the exercise of the right to strike, a registration of an agreement does not entail complete abandonment of the right. There is nothing to prevent resort to strike action (a) in support of a demand for the remuneration or conditions set out in the agreement or (b) after the disputes procedure has been properly followed.

45. If a registered employment agreement provides for the variation of the agreement any party to the agreement may apply to the Court to vary it in its application to any worker or workers to whom it applies.

46. Where an application is made to vary an agreement, the following provisions shall have effect:

- (a) The court shall consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard;
- (b) after such consideration, the Court may, as it thinks fit, refuse the application or make an order varying the agreement, in such manner as it thinks proper;
- (c) if the Court makes an order varying the agreement the agreement shall as from such date not being earlier than the date of the order as the Court specified in the order have effect as so varied.

47. A registered agreement may not be varied in such a way as to increase its scope.

48. Annual report. The Court makes a report on its proceedings to the Minister for Labour and the Oireachtas every year. The report is then published and may be purchased from the Government Publications Sale Office, G.P.O. Arcade, Dublin 1.

THE LABOUR COURTS IN ISRAEL

by Zvi BAR-NIV

President, National Labour Court, Jerusalem

The labour courts have been established by the Labour Courts Act, 1969. The labour courts are specialised courts having limited but exclusive jurisdiction in matters of labour and social security, and as such constitute a part of the judiciary of the country.

Establishing the labour courts was the final stage of process which commenced with the Declaration of Independence in 1948. Before that, the main features characterising the labour relations and labour law systems of the country were "collective laissez-faire" in the field of labour relations and abstentionism in the field of individual labour law. A complete change took place in the first ten years following the Declaration of Independence.

Legislative action was based on an outline scheme, envisaging the establishment of labour courts, thus departing from the basic principle of a unitary courts system.

The Act of 1969 and the labour courts established thereunder were not imposed upon the parties to the labour relations system, but came in response to a mutual request which found its expression in a national agreement of 1967.

Composition

The labour courts consist of: (a) professional judges; (b) lay judges and (c) registrars.

- (a) The professional judges are being appointed by the same process as are appointed the judges of the other courts. They are appointed by the President of the State upon nomination by a committee for the appointment of judges. This committee consists of nine members: two members of the legislature, two members of the Cabinet, three judges of the Supreme Court and two appointees of the Bar. In the case of appointments to the Labour Court, one of the two members of the Cabinet is, by Statute, the Minister of Labour.

Qualifications for appointments as professional judges are: for the Supreme (National) Labour Court, the same qualifications as for the Supreme Court; for the regional labour courts, the same qualifications as for the district courts.

Professional judges of the labour courts enjoy the same status and conditions of service as judges of the general courts.

The powers of judicial administration conferred by law upon the President of the Supreme Court have been assigned by the Labour Courts Act to the President of the Supreme Labour Court.

- (b) Lay judges are appointed by the Minister of Labour and the Minister of Justice, after consulting the most representative workers' organisations and representative employers' organisations. The appointment is for three years, subject to reappointment. While sitting on the bench - a lay judge is independent of the organisation which was consulted towards his appointment and in the course of hearing a case he or she enjoys the same standing as a professional judge.
- (c) Registrars are appointed by the President of the Supreme Labour Court after consulting the Minister of Labour and with the approval of the Minister of Justice. Qualified for appointment are those who are qualified for appointment as magistrates. They have limited jurisdiction and do not have the status of a judge, but are not subject to any instructions in the exercise of their judicial functions.

A bench of the Supreme Labour Court consists of three professional judges and two lay judges (in special circumstances a bench may or must consist of three professional judges and four lay judges). A bench of a regional court consists of one professional judge and two lay judges.

Structure

The labour court system consists of regional labour courts and a Supreme (National) Labour Court. There are five regional courts throughout the country with 15 judges and seven registrars. The Supreme Labour Court has four judges, including the president. The president is, in addition to his judicial functions, responsible for the administration of the labour court system as a whole.

Jurisdiction

1. The main feature of the Labour Courts Act, as far as jurisdiction is concerned, is its comprehensive approach to labour law. The result is exclusive jurisdiction in all matters of labour, and in addition to this, exclusive jurisdiction in all matters of social security - statutory and voluntary.

1.1. Regional courts have jurisdiction in the following matters:

- (a) claims between an employee and his employer, arising out of the employer-employee relationship, excluding claims in torts;
- (b) legal disputes (disputes of rights) between those qualified to be parties to collective agreements

concerning the existence, application, interpretation, implementation or violation of a collective agreement;

- (c) claims between members of employees' organisations and their organisations, arising out of membership or the organisation's activity in matters of employment;
- (d) violations of safety and protective labour legislation (in these matters the Court consists of professional judges only);
- (e) matters arising out of arbitration under the general Arbitration Law, if the subject matter of the arbitration is within the exclusive jurisdiction of the regional court.
- (f) all matters with regard to social security.

1.2 Registrars of the regional courts have jurisdiction in the following matters:

- (a) claims for unpaid wages not exceeding a certain amount;
- (b) pre-trial in individual claims.

1.3 The Supreme Labour Court has jurisdiction in the following matters:

- (a) appeals from regional courts;
- (b) collective legal disputes as under 1.1 (b) above, when the collective agreement involved is a "general" one, i.e. industry-wide or nation-wide;
- (c) "organisational" and "jurisdictional" disputes between workers' organisations or between employers' organisations.

Judgments of the Supreme Labour Court are final and not subject to appeal; they are, however, subject to certiorari proceedings before the Supreme Court for excess of jurisdiction. In criminal matters - violation of safety and protective legislation - judgments of the Supreme Labour Court are subject to appeal, by leave, to the Supreme Court.

Main problems

- (a) being the only civil, specialised courts, operating within a unitary judicial system;
- (b) difficulties of adjustment of the legal profession;
- (c) selection and training of judges;
- (d) workload at the level of the regional courts.

THE LABOUR COURT OF NORWAY

by Stein EVJU
President, Labour Court, Oslo

Background

The Norwegian court system is basically uniform. The ordinary courts (county courts, courts of appeal and the Supreme Court) have, in general, jurisdiction in all areas of law. In this the Labour Court stands out, being a special court with exclusive jurisdiction in certain areas of labour law.

In Norway, like in so many other countries, collective agreements developed independently of legislation, leaving open, however, questions as to their status and effects under the general law of contracts. And this was found insufficient to deal with the practical needs and problems such agreements gave rise to. In 1902, the central organisations of workers and employers (LO, founded 1899, and NAF, founded 1900, respectively) concluded a general agreement on resolution of industrial disputes, based on the principle of negotiations and private arbitration, which was applied in most ensuing collective agreements. Also in 1902, the Government put forward its first proposals on industrial relations legislation. But the crucial development started five years later and resulted in the 1915 Labour Disputes Act (LDA). The fundamental ideas underlying the Act were to promote and strengthen collective agreements as an instrument for regulating wages and working conditions and to create machinery for the peaceful solution of industrial disputes, taking into consideration the public interests concerned. The Act laid down the relative peace obligation in statutory form and formalised the distinction between disputes of interest and disputes of right embodied in the 1902 Agreement. For disputes of interest a system of mediation was introduced, leaving open recourse to industrial action if mediation failed. And for disputes of right the Labour Court was established as a special institution to deal with matters relating to collective agreements. The basic considerations behind the creation of this special court were two, and they are still valid. For disputes concerning collective agreements a machinery capable of rendering solutions more quickly than the ordinary court system is needed. And the Court should possess expert knowledge of law and practice of industrial relations and collective agreements in general.

The presently valid Labour Disputes Act was adopted in 1927 (with later amendments), and is mainly a technical revision of the 1915 Act upholding all the basic features of this Act. The 1958 Public Service

Labour Disputes Act (PSLDA) established a system of collective bargaining and collective agreements for state civil servants along the same lines as the LDA, including the role of the Labour Court. (Civil servants in local and regional governments fall within the scope of the LDA since 1956.)

The composition of the Labour Court

Originally having five members the Labour Court since 1927 is composed of seven members, all appointed by the Cabinet-in-Council and serving for three years at a time. The president, who is the only judge in a full time position at the Court, and one of the neutral members must have all the qualifications prescribed for a Supreme Court of Justice. In practice, however, since 1945 both neutral members alongside the president have been appointed from among persons meeting those requirements and being Supreme Court or Court of Appeal judges. Four lay judges are appointed from among persons nominated by the major organisations of workers and employers; any employers' association with at least 100 members and 10,000 employees, and any trade union with at least 10,000 members, may each nominate two members with substitutes. Ever since 1915 the permanent lay judges have been appointed upon nomination by the largest central organisations, LO and NAF; some substitute members are appointed from among nominees of other organisations. No judge may be an official or member of the board of any workers' or employers' organisation.

Each case is heard by the full Court and decided by majority vote of the seven sitting judges. As a matter of fact, in the post-war period the great majority of decisions have been unanimous. At times, there is a 4-3 split, but votes of 5-2, with either the employer- or worker-nominated judges dissenting, are rare. If a case before the Court concerns an organisation whose nominee(s) have only been appointed as substitute judges, the substitute shall act in lieu of the lay judge for whom he is a substitute in the case concerned.

Structure and system

As indicated above, the Labour Court is organised as a one-division court. And being a special court, it has a unique position in the Norwegian juridical and court system. The decisions of the Labour Court are final; they are not subject to appeal to any higher court, with the mere exception of forum disputes. A decision of the Labour Court to dismiss a case on grounds that it does not fall under the jurisdiction of the Court may be appealed to the Supreme Court which can decide on the forum question, but not on the substantial questions of the case in lieu of the Labour Court. Likewise, a decision of the Labour Court may be subject to an appeal for annulment to the Supreme Court on grounds that the case falls outside the scope of jurisdiction of the Labour Court.

The labour court system consists also of local labour courts (however not under the PSLDA). The Local Labour Court is the ordinary County Court (one judge) acting in a special capacity and with two lay judges, one worker and one employer. The local labour courts have jurisdiction in disputes concerning collective agreements of a local or regional

character only. And in point of fact, with the highly centralised collective agreements system in Norway, very few cases are brought before the local labour courts, at the average less than one per year for the country as a whole. Decisions of the local labour courts are subject to appeal to the Labour Court, the average number of such appeal cases is less than one per two years.

Jurisdiction and procedure

The jurisdiction of the Labour Court is confined to disputes regarding collective agreements and industrial action. Accordingly, the Court handles cases concerning the validity and interpretation of collective agreements, questions of breach of collective agreements and of the peace obligation, and claims for damages resulting from such breaches. At the outset the Labour Court has jurisdiction only in cases where claims are based on a collective agreement. The Court can take statutory provisions under consideration in so far as they have a bearing on the question of the validity or interpretation of the agreement and on the question of breach of the peace obligation, the latter particularly includes the greater number of LDA and PSLDA provisions on mediation. But the Court does not have jurisdiction where claims are based on statutory provisions as such. Furthermore, the Court does not have jurisdiction in individual disputes, with two exceptions. Individual workers and employers are liable in damages for breach of collective agreement or the peace obligation, and claims for indemnification in such cases lie within the jurisdictional domain of the Labour Court. In addition, in cases concerning collective agreements, the Court may give judgement on claims based on individual contracts of employment, provided that such claims have been included in the suit and that the decision as regards them directly follows from the decision concerning the collective agreement, with no further questions on evidence or legal problems being necessary to resolve in order to dispose of the individual claims.

In disputes before the Labour Court organisations may only act as plaintiff and defendant, and in case more than one organisation are party to the collective agreement, normally only the superior ones. Furthermore, a case will normally not be admitted by the Court unless the dispute has been subject to negotiation between the parties. When a complaint is filed with the Court, the president sends a copy of the complaint to the defendant and the case is prepared for hearing through further exchange of trial documents between the parties, administered by the Court's president, who thereafter sets a time and place for the hearing. The Court can subpoena any necessary witnesses or documents, and the hearings of the Court are as a rule public. Hearings are conducted in comparative informality, and questioning is freely done by all judges. The Labour Court is seated in Oslo, and as a rule hearings are conducted there. But at times, hearings are held at "the scene of action", particularly in cases concerning unlawful industrial action where the Court's presence on the spot may be useful in different respects.

Particular problems

The jurisdictional rules may give rise to some uncertainty and forum disputes, particularly as regards individual claims based on collective agreements. In practice, however, this does not represent a problem of any mentionable size.

On the other hand, topical interest has in later years been given to some problems arising from the procedural rules, in particular as regards suits for indemnification. The full procedural rights of individual parties, and not only the organisations involved, has in some instances led to suits being dropped because the carrying through of the suit would inflict a full stoppage of work while the proceedings in court take place. The rights of individuals in this respect also give rise to some more technical problems of procedural nature.

THE LABOUR COURT SYSTEM IN SPAIN

by Rafael MARTÍNEZ EMPERADOR

Member of the General Council of the Judiciary of Spain, Madrid

Jurisdictional unity and jurisdictional orders

The principle of jurisdictional unity is the basis of the organisation and operation of the courts (article 117.5 of the Spanish Constitution of 1978).

Jurisdictional unity not only precludes the existence of special jurisdictions but requires that the exercise of jurisdictional power, both in passing judgement and having judgements executed, lies exclusively within the competence of the courts and tribunals of the judiciary.

However, jurisdictional unity does not imply the existence of a single jurisdictional order or of uniform tribunals. On the contrary, it permits and even counsels the existence of separate jurisdictional orders and specialised jurisdictional bodies, each with its own sphere of competence.

There are four jurisdictional orders in Spain: civil jurisdiction, criminal jurisdiction, jurisdiction for suits under administrative law and labour jurisdiction. This explanatory note refers to the labour jurisdictional order.

Composition of the jurisdictional bodies

The bodies composing each of the jurisdictional orders are served by judges and magistrates of the judiciary who are independent, irremovable, liable and subject only to the rule of law. The judges and magistrates are members of a preofession to which they accede by passing a number of selective and objective tests. Citizens may participate in the administration of justice through the establishment of the jury, provided for under the Constitution solely for those criminal actions as may be determined by law.

The judges of the labour jurisdictional order are therefore professional judges. Under the terms of the Constitution there is no provision in labour law cases for a jury or for joint representation of workers and employers.

Labour cases and the social jurisdictional order

The labour courts are the sole judicial authorities competent to hear disputes coming within their purview in the social branch of law. A decision handed down by a labour court may be reversed only by an extraordinary appeal to the Supreme Court on a point of law or by petition to a higher court, as the case may be. Labour cases are governed by the principles of cross-examination, submission of evidence by the parties concerned, simplified legal structure, expediting of court action by the Crown, personal appearance of the parties, joinder of suits and simplified procedure; proceedings are summary and free of charge.

The Labour Court is the competent authority to hear disputes in the social branch of law. It is composed of a single person, the labour judge, who exercises jurisdictional power assisted by a labour court secretary who possesses legal authority to attest documents and is directly responsible for administering the rest of the staff of each court, consisting of such officers, assistants and judicial agents as befit the obligations incumbent upon it.

The territorial competence of a labour court is the province, in the capital city of which it is located. There are, however, a number of labour courts whose territorial jurisdiction is a subdivision of a province, as in Asturias (which has courts in Gijón and Mieres as well as in Oviedo), Pontevedra (which has courts in Vigo as well as in the capital) and Cadiz (which has a court in Jerez). There are also labour courts in Ceuta and Melilla.

When the workload so requires there may be several labour courts, each of which is given a corresponding number and whose territorial jurisdiction is identical. In such cases a senior labour judge is designated and a board of judges appointed whose functions are purely administrative. As indicated above the decisions handed down by the labour courts, as the sole competent judicial authority, may be reversed only by an extraordinary petition to a higher court or by appeal to the Supreme Court on a point of law, as the case may be.

The body responsible for hearing petitions is the Central Labour Court, whose jurisdiction is national and which is located in the capital of the Spanish State. It is a collegiate body comprising five chambers, the first of which hears all petitions that are not specifically assigned to the other courts, the second petitions with respect to dismissals, the third and fourth petitions with respect to social security and the fifth petitions with respect to collective disputes.

The Supreme Court with jurisdiction throughout Spain is the highest jurisdictional body for all orders, except in matters relating to constitutional guarantees. Chamber No. VI, known as the Social Division, hears appeals on points of law relating to labour and social security matters.

Competence

The jurisdictional bodies of the social order are the sole authorities competent to pass judgement and have judgement executed in respect of disputes that arise in the social branch of law.

Their competence is determined by the matter in dispute and comprises:

- (a) individual disputes between employers and workers arising out of a contract of employment;
- (b) collective labour disputes of a juridical nature;
- (c) verification of the legality of collective agreements;
- (d) law suits with respect to social security;
- (e) all other disputes in which jurisdiction is expressly assigned to them by law;
- (f) claims arising out of a failure to observe the statutory and other provisions enacted in the social field which particularly affect the plaintiff and are not subject to any other special procedure.

The objective and functional sphere of competence of the labour courts derives from the fact indicated above that they are the sole competent judicial authorities.

Appeals against decisions handed down at this single level of jurisdiction by labour courts in respect of claims for over 200,000 pesetas may be challenged by petition to a higher court or by appeal to the Supreme Court on a point of law.

The functional competence of the Central Labour Court relates to petitions against decisions not appealable on a point of law in respect of claims where the amount in dispute is over 200,000 pesetas and not more than 1 million pesetas. A petition may also be lodged with the Central Labour Court, even though the amount in dispute is not over 200,000 pesetas, when the point at issue affects all or a large number of workers or beneficiaries, depending on whether it concerns wage claims or social security benefits respectively. Finally, a petition may be lodged against decisions handed down by labour courts in respect of collective disputes or the verification of the legality of collective agreements.

The functional competence of the Social Division (Chamber No. VI) of the Supreme Court relates to appeals on a point of law against decisions handed down by labour courts, irrespective of the point at issue, in respect of claims for amounts exceeding 1 million pesetas. An appeal may also be lodged with the Supreme Court:

- (a) against decisions handed down by labour courts in respect of claims based on total disability and major disability and on temporary

incapacity for work based on such disability, provided the amount of the claim is in excess of 500,000 pesetas;

- (b) against decisions handed down by the labour courts in respect of the dismissal of members of works committees or staff delegates.

The Social Division of the Supreme Court, meeting in plenary session, also hears appeals "in the interest of the law", whose effects are strictly jurisdictional and therefore do not modify in any way the specific juridical situation created by the decision handed down by the Central Labour Court against which the appeal is lodged.

Other matters

At the time of drafting this note an Organic Law respecting the Judicial Power has been prepared in draft form by the Ministry of Justice which, if adopted, will modify important aspects of the current social jurisdictional order.

Finally, it should be noted that the system of labour courts in Spain is currently suffering considerably from an exceptional increase in the number of cases brought before them, which has not been met by a corresponding increase in the number of jurisdictional bodies. The fact that the number of cases brought before the labour courts rose from 16,722 in 1940 to 126,088 in 1970 and 317,202 in 1983, whereas there are only 150 labour courts in Spain to deal with this enormous workload, is sufficiently eloquent to render any further comment superfluous.

THE COURT PROCEDURE IN LABOUR DISPUTES IN SWEDEN

by Ake Bouvin

Former President, Labour Court, Stockholm

Introduction

The Labour Court is the central court in Sweden for the judgement of labour disputes. It started its activities in 1929 with the main function of taking up and deciding cases concerning the interpretation and application of collective agreements. Initially all cases went immediately to the Labour Court. By degrees the direct access to the Court has been limited, and certain labour disputes can now be subject to a decision by lower public courts (assize court - tingsrätt) in the first instance with the right of appeal to the Labour Court. The decision of the Labour Court is final and is not subject to appeal.

Court procedures in labour disputes were laid down in the Act on Litigation in Labour Disputes (LRA), which came into effect on 1 July 1974 and which replaced the 1928 Labour Court Act. To the extent that LRA does not provide for judicial proceedings in labour disputes the appropriate paragraphs of the code of procedure for discretionary civil actions applies. The code of procedure regulates the judicial processes in the public courts.

The authority of the courts

The Labour Court is the court of first and last instance in disputes over collective agreements or other labour disputes referred to in the Act on Co-Determination at Work (MBL), which came into force on 1 January 1977, provided that the action is brought by an employer organisation or trade union or by an employer who has himself signed a collective agreement. The Court also has the authority, as first and final instance, and on the same conditions, to decide other labour disputes, when there is a collective agreement between the labour market organisations or when individual employees who are affected by the dispute are employed on work which is covered by a collective agreement which is binding upon the employer. The situation arising when a collective agreement is temporarily inapplicable - for example, after termination in connection with a new round of wage negotiations - in no way restricts the above-mentioned authority of the Labour Court.

In broad terms, the above description of the authority of the Labour Court means in practice that the Court is the first and last instance in the following main groups of cases: disputes over collective agreements,

other labour disputes referred to in the Co-Determination Law - such as disputes over the right of association, the right to negotiate, the right to receive information, illegal industrial action or lock-outs - and labour disputes in cases where a collective agreement is normally applicable, for example, disputes over the position of a trade union representative, employment security and vacations, providing in all cases that the action is brought to court by the employers' association or a trade union.

Other labour disputes are decided by the assize courts in the first instance, and can then be appealed up to the Labour Court. In this group of disputes are all labour disputes concerning unorganised labour or organised workers whose trade union is not willing to bring or pursue an action on their behalf.

According to special provisions in the Litigation Act disputes which have been treated according to the law can be referred for decision by an arbitration board. The Labour Court or the assize courts are thus not authorised to decide labour disputes which have been referred to such arbitration in accordance with an agreement between the industrial relations organisations. Exceptions to this rule are cases which relate to the termination of a collective agreement on the grounds of gross breach of agreement, and cases relating to certain infringements of the right of association.

Composition of the Labour Court

The Labour Court is composed of three chairmen, three deputy chairmen, and sixteen other members. The chairmen and deputy chairmen should have a legal training and experience as judges, while three of the other members should have specific knowledge of conditions on the Swedish labour market. The persons appointed to the "professional" positions should be selected from among individuals who cannot be regarded as representing the interest of employers or employees. Of the remaining thirteen members, the laymen on the panel of judges, four are appointed on the recommendation of the Swedish Employers' Confederation (SAF), four nominated by the Swedish Local Authorities' Association, one by the County Councils' Association, one as a representative of the State as an employer, four upon the nomination of the Trade Unions' Central organisation (LO) and two nominated by the central organisation of Salaried Staffs' Associations. Each member, other than the three chairmen, has three substitutes, who are appointed on an identical basis, except that two of the substitutes for the member nominated by the Salaried Staffs Associations' central organisation (TCO) are nominated by the Professional Employees Associations' central organisation (SACO/SR).

The Labour Court is normally competent to function with a chairman and a maximum of six and minimum of four members. For deciding straightforward cases the Court is competent with a chairman and two other members. For trial proceedings in the Labour Court there are normally seven judges, i.e. the chairman, the deputy chairman, one more magistrate, two employer representatives and two worker representatives.

As regards the lay members the Labour Court is constituted differently for different cases. In cases of general importance for conditions on the labour market there is one representative from the SAF and one lay member representing the public-sector employers, while on the worker side there is one representative of LO and one of TCO (general composition). In cases which are of significance only for specific negotiating areas the lay members come from the fields most immediately affected by the dispute (special composition). In straightforward cases, which can be decided by three members, there is one lay representative from the employers' side and one representing the workers.

The Labour Court is not divided into permanent sections, but works instead through three groups of members, which, within the rules of competence, change composition after a certain period of time. As is the case with the Supreme Court in Sweden, the Labour Court can meet in plenary sitting, if during the discussions prior to making a decision the prevailing opinion is at variance with previously accepted basic legal principles or interpretation of the law.

The rules laid down in the code of procedure concerning disqualification apply to the members of the Labour Court. These are applied, in the case of lay members so that the member in question may not sit in court to decide a case in which a union or association to which he belongs is party to the court proceedings. If a member is disqualified in this way the substitutes sits in his place.

The Labour Court is, through the system of lay members, closely linked with the trade unions and the employers' associations, and thus obtains the necessary specialist knowledge about the specific problems of the labour market. Similarly, the representatives of the industrial relations parties have, as a result of sitting and making decisions in the Labour Court, become closely acquainted with the procedure for the administration of justice in the courts.

Basic principles of procedure during actions in the Labour Court as court of first instance

The Labour Court has authority throughout the country and is in the overwhelming majority of cases both first and last instance. This situation, taken together with the composition of the membership of the Labour Court, gives the Court its specific character. If the Court is to function as sole instance in its area of competence it is essential to limit the flow of cases reaching it. Primarily this has been achieved in connection with the limitation of direct access to the Labour Court by removing certain types of labour disputes to the Assize Court as court of first instance, as mentioned above. A special limitation clause is also included in the Litigation Act, under which an action may not, in general, be brought in the Labour Court as court of first instance before negotiations, which can be demanded under the terms of the Co-determination Law or under the terms of a collective agreement, have taken place to resolve the disputed issue. Hearing in the Labour Court without prior negotiations is permissible only for certain types of actions - for example, cases concerning illegal industrial action or lock-outs - or when there is some obstacle preventing negotiations which

is not the responsibility of the plaintiff. This limitation clause is of considerable practical significance. Collective agreements, almost without exception, incorporate or refer to rules for negotiating procedures, and the vast majority of disputed matters are resolved at the negotiating table. The majority of actions about collective agreements relate to matters of principle or are important issues in some other respect.

In this connection it should be mentioned that the Labour Court can, without making a judicial examination, instruct the parties to the dispute, by referring to more general pronouncements, to attempt to resolve the action they have brought by means of negotiations, with the right for either party to return with a further action in the event they are not able to negotiate an agreement.

On the other hand, actions seeking declaratory judgements by the Labour Court can be brought to a greater extent than is the case in the public courts. This is because the judgements of the Labour Court in general are of importance as precedents. Under the terms of the Litigation Act actions which do not include the claim that the opposing party should be obliged to act or cease to act in some way are disallowed if it is not of considerable importance for the plaintiff or for the individual on whose behalf an organisation is bringing the action that a declaratory judgement is given. The Labour Court has stated that a declaratory judgement is regarded as of importance for either party when there is reason to suppose that the allowance of the claim will either directly affect the opponent in the legal proceedings in relation to the party or will also be directly decisive during a future substantive action.

A distinguishing feature of actions in the Labour Court is the dominating position of the industrial relations organisations. In disputes about a collective agreement an organisation can bring and pursue an action for an individual who is or has been a member of the organisation. In other labour disputes an employers' association or a trade union can bring and pursue an action in the Labour Court on behalf of a member of the organisation. If an organisation prefers not to represent its member in a court action the member is, as was mentioned above, obliged to bring an action on his own behalf in an assize court. If a plaintiff wishes to bring an action in the Labour Court against a member or former members of an organisation the organisation itself must also be proceeded against. The organisation can then defend the action on behalf of the member, if he chooses not to do this himself. If there is reason to suppose that a collective agreement which has been signed by parties other than those involved in the action is of importance for the trial of the action the organisations which have reached the collective agreement shall be given opportunity to state their point of view in the action.

Procedures of the Labour Court as court of first instance

When the Labour Court is sitting as a court of first instance its procedure is the same, with certain deviations, as applies to trials in assize courts. An action is brought by a written application for a

summon. The Court issues a summon which is served upon the defendant. Next, the pre-trial hearings take place. In contrast to what is stipulated in the code of procedure the Labour Court can decide in the light of circumstances whether the pre-trial hearings are to be oral or in writing. Usually both written and oral hearings occur. As a rule at least two written documents are exchanged - the application for a writ and the defendant's reply to the charge - after which there will be a meeting, sometimes several meetings, to oral hearings. The same principle applies to the Labour Court as to the public lower courts in discretionary civil actions, namely, that during the hearings the court seeks to bring the two sides to a settlement if such is appropriate. After the pre-trial hearings are concluded the court hearings commence. If, once the court hearings have commenced, they are postponed, the Labour Court can continue with them even though a longer period of time has passed than is allowed in the procedural code.

The Labour Court can dismiss or write off a case, hand down a judgement by default, i.e. a decision resulting from the absence of one party, and a judgement of a claim which has been admitted or conceded and ratify a out-of-court settlement, without holding hearings. In other situations the Court can, at the request of either party, and under certain precisely stipulated conditions, bring the case to a conclusion without holding court hearings.

Procedures of the Labour Court as appellate court

An appeal against the judgement or decision of an assize court can be made to the Labour Court by lodging a notice of appeal in accordance with the provisions of the procedural code. The procedure is essentially the same as is applied by the public court of appeal in discretionary civil actions. Cases which are appealed can be decided without court hearings, if oral arguments are not being presented or if there is no special reason for acting otherwise. Certain other cases are decided without exception without holding court hearings.

General points on the procedures of the Labour Court

The record of the court proceedings does not need to include a signed statement on oath or statements of evidence by witnesses or experts, as the Labour Court is the court of final instance. Such statements are normally tape-recorded and kept for a certain period of time after the judgement has been handed down. The decision is based not only on what was brought out in the court hearings but also on what the relevant documents say concerning the disputed issue. In contrast to what the procedural code lays down for public courts, the decision does not need to be announced within two weeks of the conclusion of the court hearings or the end of the trial, but should be announced as soon as possible. During the court proceedings the time and method of announcing the decision should be announced.

LABOUR COURTS IN SWITZERLAND

by Alexandre BERENSTEIN

Former Judge of the Swiss Federal Court,
Chairman of the Federal Office for Conciliation in Labour Disputes

Introduction

The Swiss Confederation is a federal State made up of 26 federate States - cantons or semi-cantons - which for the sake of simplicity will all be referred to as cantons.

Civil law is uniform over the whole territory of the Confederation. In particular, labour contracts and collective agreements are governed by the Code of Contracts of 1911, as revised in 1971. Nevertheless, under Section 64 of the Federal Constitution, the organisation, the procedure and the administration of justice come under cantonal legislation. It is for this reason that jurisdictions in the matter of labour disputes - and indeed in other matters - are extremely varied. Half the cantons, or 13 out of 26, have labour courts, whereas in the others only the ordinary civil courts are competent to settle disputes arising between employers and workers. The Federal Court, the supreme court of justice, has no special division for deciding labour disputes.

Reasons for the establishment of labour courts

The reasons that have been advanced, particularly when the first conciliation courts were set up (in Geneva in 1882), are the following:

- workers wish to be judged in labour disputes by persons who are nearer to them than professional judges, by their peers, before whom they can express themselves more freely and who understand their problems better;
- they must have their wages to live, and they expect to obtain justice more rapidly, bypassing the lawyers, and to take advantage of the free nature of this type of procedure;
- men of their own trade are better fitted than professional judges to appreciate the quality of work and to follow the customs of the occupation, and in this way it becomes unnecessary to call in experts. (It may be mentioned, however, that the last argument has today lost its value.)

Composition

In most of the cantons with labour courts, these are presided over by a lawyer, generally a professional judge, assisted by representatives of the employers and of the workers, these lay assessors being elected by the people or by the cantonal parliament, often on the proposal of the occupational organisations. In Geneva, there is no legally qualified judge in the Court of Conciliation of first instance, which consists uniquely of employers' and workers' representatives, elected by the employers and workers of each occupational, within 12 occupational groups. The Conciliation Court of Appeal, which exists only in this canton, is presided over by a judge of the Court of Justice (the appeals court), assisted by two judges who are employers and two judges who are workers from the occupational group concerned. A joint court pronounces on disputes of competence and lis alibi pendens between conciliation courts and civil courts.

It should be added that in certain cantons with labour courts these exist only in some of the urban communes and that it is the civil courts that decide disputes of this kind in the other communes. This is found in Berne, Vaud and Zurich.

Competence

In most of the cantons with labour courts these courts deal only with disputes whose value does not exceed a certain amount, which varies from 3,000 to 10,000 francs. Sometimes, moreover, the president of the court or a justice of the peace pronounces alone on disputes of little importance (up to 100 francs in Obwald, up to 200 francs in Saint-Gall). In two cantons (Geneva and Zurich), the labour courts deal with labour disputes whatever the value at issue; in Zurich, however, when the value exceeds 5,000 francs the parties may bring their dispute before the ordinary courts. In Aargau only disputes concerning an industrial undertaking or home work are judged by the labour court irrespective of the value at issue; in other disputes the Labour Court is competent only up to a value of 5,000 francs.

Appeals

In most of the cantons either the labour court pronounces as the sole judicial authority of the canton or an appeal may be made to the ordinary courts. In Geneva the appeal to the Conciliation Court of Appeal mentioned above is possible as soon as the value at issue exceeds 1,000 francs. Any judgement handed down by a cantonal court as the final judicial authority of the canton may be referred to the Federal Court by means of an application for revision (provided that the value at issue reaches 8,000 francs or is undetermined) or, where appropriate, by means of an application under public law, for infringement of constitutional rights, or an application for annulment (whatever the value at issue). Lastly, if the parties so agree, they can lay the matter direct before the Federal Court without passing through a cantonal court, provided that the value at issue is at least 20,000 francs.

Procedures

Although procedure is in principle governed by cantonal law, federal law imposes on the cantons the obligation to observe certain rules of procedure in disputes arising out of a labour contract where the value at issue does not exceed 5,000 francs (Section 343 of the Code of Contracts). In these disputes:

- the procedure must be simple and rapid;
- the judge determines the facts in full independence and assesses the evidence at his own discretion;
- the parties are not as a rule liable for any lawyers' fees or court costs.

Furthermore, whereas the presence of counsel is often excluded in disputes where the value at issue is small, the Federal Court has ruled that in disputes where the value at issue is important, which are often highly complicated, the right of the parties to be assisted by counsel must be preserved, at any rate during one of the decisive stages of the procedure.

Other questions

The labour courts decide above all disputes between employers and workers that arise out of a contract of employment. Their competence is sometimes extended to other disputes: in Geneva, for example, to disputes between employers or workers and the equalisation funds responsible for applying the provisions of collective agreements. Generally speaking, disputes between occupational organisations do not come within the competence of the labour courts: they come within that of the ordinary courts, but in fact are often settled by the occupational courts set up by collective agreements or by the conciliation and arbitration offices established by the cantons and the Confederation, whose competition is close to that of the labour courts. Sometimes the competence of the labour courts does not extend to all individual labour disputes: in the Canton of Basle Town it does not extend to disputes in which domestic employees are concerned.

INDUSTRIAL TRIBUNALS IN THE UNITED KINGDOM

by Lord McDONALD
Employment Appeal Tribunal, Edinburgh

The term "labour court" is not one which is used in the United Kingdom. What we have is a system or network of tribunals, known as industrial tribunals, which deal with a variety of employment and associated matters.

The first industrial tribunals were established in 1964. They had a very limited jurisdiction to deal with appeals against assessments to levy which had been made under the then Industrial Training Act, 1964. They consisted of a legally qualified chairman and two lay members, one from each side of industry. They were all engaged part time and did not have to meet very often. Any party who was dissatisfied with the decision of a tribunal on a point of law might appeal to the Court of Appeal in England or the Court of Session in Scotland.

In 1965 the Redundancy Payments Act was introduced. This made it obligatory for an employer who dismissed an employee on the ground of redundancy to pay to him a lump sum, known as a "redundancy payment", provided he fulfilled certain conditions as to length of service and other matters. The jurisdiction of existing industrial tribunals was extended to deal with applications for such redundancy payments. This greatly extended the work of the tribunals, and in England and Wales some chairmen were engaged full time. Appeal on questions of law continued to be competent to the Court of Appeal or the Court of Session.

The real impetus for the establishment of a separate judiciary to deal with industrial matters came with the passing in 1971 of the Industrial Relations Act. The intention of this Act was to control and restrict certain forms of industrial action, on the one hand, and to introduce the conception of unfair dismissal, on the other. No employee who had the necessary length of service and who fulfilled certain other conditions could be dismissed unless his employer could show a valid reason for it such as the conduct of the employee, his competence for his job, or that he had genuinely become redundant. Even if an employer could establish such a reason, the dismissal was still unfair unless the employer could go further and establish that he had acted reasonably overall, having regard to equity and the whole circumstances of the case. If the employer failed to prove these matters the dismissal was unfair and he had to pay compensation to his dismissed employee.

It became the task of the industrial tribunals to decide whether a dismissal was unfair and, if so, what amount of compensation was appropriate. This greatly increased their work. Full-time presidents were appointed for England and Scotland and a number of tribunal chairmen were made full time. At the same time a new appeal court was constituted with exclusive jurisdiction to hear appeals from industrial tribunals. It was called the National Industrial Relations Court. It consisted of High Court judges and lay members with special knowledge or experience of industrial relations.

The Industrial Relations Act, 1971, did not have a long existence. Following upon a change of government it was repealed by the Trade Union and Labour Relations Act, 1974. The industrial tribunals were preserved, mainly in respect of their jurisdiction regarding claims for redundancy payments and for unfair dismissal. The National Industrial Relations Court was abolished and the former system of appeal from industrial tribunals on questions of law direct to the Court of Appeal or to the Court of Session was restored.

In 1976 the Employment Appeal Tribunal was established with exclusive jurisdiction to hear appeals from industrial tribunals on questions of law. This Appeal Tribunal is similar in constitution to the former National Industrial Relations Court. It has a full-time president, who is an English High Court judge. Other High Court judges sit part time as does the Scottish judge who is a Senator of the College of Justice. That is the expression used in Scotland to describe a judge of the High Court. The lay members are persons with special knowledge or experience of industrial relations. The detailed legislative provisions regarding the Employment Appeal Tribunal are now contained in the Employment Protection (Consolidation) Act, 1978.

The Central office of the Appeal Tribunal is in London. There is an office in Edinburgh where Scottish appeals are heard. The Appeal Tribunal, however, may sit anywhere in the United Kingdom and occasionally does sit elsewhere than in London or Edinburgh if this is more convenient to all concerned. The tribunal does not normally hear evidence although it has power to do so. Its proceedings usually take the form of legal argument. Hearings take place in public unless, for special reasons, it is considered to be desirable that they should be held in private. An appeal lies to the Court of Appeal or the Court of Session from any decision of the Employment Appeal Tribunal on any question of law. A party who wishes so to appeal must obtain leave, either from the Employment Appeal Tribunal or from the appellate Court.

The jurisdiction of industrial tribunals has been very greatly enlarged since they were first established in 1964. In addition to questions of redundancy and unfair dismissal, it extends to a wide variety of matters affecting the relationship between employer and employee. These include an employee's right to a written statement containing particulars of his employment; conditions regarding trade union membership and activities; the right to time off work for certain purposes; and the right of an employee who has been dismissed to be given reasons in writing for his dismissal. These grounds of jurisdiction are all contained in the Employment Protection (Consolidation) Act, 1978.

Other grounds of jurisdiction are to be found in the Equal Pay Act, 1970, and the Sex Discrimination Act, 1975. The object of these statutes is to make it unlawful for an employer without good reason to discriminate between men and women on grounds of sex on all matters affecting pay, conditions of employment, selection of potential employees, opportunities for promotion and other respects. An aggrieved person may complain to an industrial tribunal that any of these provisions have been breached and seek a remedy. Industrial tribunals may also entertain complaints under the Race Relations Act, 1976, that an employer or a potential employer has discriminated against a person on racial grounds.

On all the foregoing matters an appeal lies from any decision of an industrial tribunal to the Employment Appeal Tribunal on a question of law only. It is not always easy to determine what is meant by a question of law. All matters relating to the credibility of witnesses, the weight to be attached to any particular item of evidence, and what is recognised industrial practice in any given respect tend to be regarded as questions of fact to be decided by the industrial tribunal and therefore unappealable. It is only in the rare case where the Appeal Tribunal is able to say that the decision of an industrial tribunal on fact is one which no reasonable tribunal properly directed on the law could reach that the Appeal Tribunal will be able to interfere with the original decision.

ANNEX I

List of participants

Belgium

Mr. J. René RAUWS, Judge, Social Division of the Cassation Court, Brussels.¹

Finland

Mr. Kari-Pekka TIITINEN, Judge, Labour Court, Helsinki.

France

Mr. P. VEILLIEUX, President, Social Chamber of the Cassation Court, Paris.

Federal Republic of Germany

Mr. Otto KISSEL, President, Federal Labour Court, Kassel.²

Mr. Friedrich AUFFARTH, Vice-President, Federal Labour Court, Kassel.

Mr. Friedhelm JOBS, Judge, Federal Labour Court, Kassel.

Mr. Dirk NEUMANN, Presiding Judge, Federal Labour Court, Kassel.

Hungary

Mr. Zoltan NAGY, Vice-President, Supreme Court, Budapest.

Mr. Istvan KERTESZ, Deputy Chairman, College for Labour Cases, Budapest.

Iceland

Mr. Bjarni K. BJARNASON, President, National Labour Court, Reykjavik.

Ireland

Mr. Maurice P. COSGRAVE, Chairman, Labour Court, Dublin.¹

Mr. John M. HORGAN, Deputy Chairman, Labour Court, Dublin.¹

Israel

Mr. Zvi BAR-NIV, President, National Labour Court, Jerusalem.²

Mr. Menachem GOLDBERG, Vice-President, National Labour Court, Jerusalem.

Mr. Zeev NEGBI, Judge, National Labour Court, Jerusalem.

Norway

Mr. Stein EVJU, President, Labour Court, Oslo.

Mr. Finn MIDTSKAUG, Vice-President, Labour Court, Oslo.

Spain

Mr. Rafael MARTINEZ EMPERADOR, Member, General Council of the Judicial Branch of Spain, Madrid.

Mr. Bartolomé RIOS SALMERON, Judge, Labour Court, Murcia.

Mr. Eustasio DE LA FUENTE GONZALEZ, Judge, Central Labour Tribunal, Madrid.

Mr. Antonio RUIZ-FARABO BAQUERO, President, Central Labour Tribunal, Madrid.

Mr. Blas OLIET GIL, Secretary General, General Council of the Judicial Branch of Spain, Madrid.

Sweden

Mr. Ake BOUVIN, Member, Supreme Administration Court; former President, Labour Court, Stockholm.²

Mr. Johan LIND, President, Labour Court, Stockholm.

Switzerland

Mr. Alexandre BERENSTEIN, Former Judge, Federal Supreme Court.

United Kingdom

Hon. Lord McDONALD, Employment Appeal Tribunal, Edinburgh.¹

International Labour Organisation

Mr. Alan GLADSTONE, Chief, Industrial Relations and Labour Administration Department, Geneva.²

International Institute for Labour Studies

Mr. Bert ESSENBERG, Industrial Relations Sector, Geneva.

¹ Invited but did not attend.

² Member of the Initiating Committee.

ANNEX II

Suggested points for discussion

- Session I:
- A. Presentation of the various labour courts
 - B. Selected issues arising out of the presentation:
 - 1. Background and reasons leading to the establishment of separate labour courts.
 - 2. Composition of the labour court: judges, assessors, lay members, etc.
 - 3. Jurisdiction and the competence of the labour court.
 - 4. Particular problems, if any, of labour courts which are not treated below.
- Session II:
- The place and role of labour courts in the judiciary and in the labour relations system:
- A. Their place and role in the judiciary:
 - 1. "Labour courts" as part of (a) a "unitary" or "unified" judicial system with a special chamber for labour matters; (b) as an identifiable part of a "pluralist" system (e.g. commercial, criminal, administrative courts as well as specialised labour courts); (c) as part of a "unitary" or "unified" judicial system with an identifiable labour court as a special exception.
 - 2. Relation of the labour court to other courts: appeal, certiorari or other linkage to a court of general jurisdiction.
 - 3. Appeals: possibilities, frequency and results.
 - 4. Effect of appeal to courts of general jurisdiction on the development of a special jurisprudence by the labour court in the field of labour law.
 - 5. Relationship between labour court judges and general court judges (permanent assignment to labour courts or shifting assignments in various courts); effect of temporary assignment from one to another.
 - B. Their place and role in the labour relations system:
 - 1. Attitude of the parties in the labour relations system with regard to the labour court:

- (a) concerning the enforcement of individual rights and legal disputes; (b) concerning collective disputes.
2. Use made by the labour relations parties (i.e. individual employer and employers organisations, workers and trade unions) of the services of the labour court; preponderance of cases brought by one or other side.
3. Relationship between arbitration (in "legal" disputes and in "economic" disputes) and the labour court.
4. Extent of use by the labour court of conciliation or mediation as an adjunct to adjudication.
5. Direct and indirect effects of the functioning of the labour court on the industrial relations climate: (a) in the negotiation phase; (b) during conflicts.

Session III: Case load of labour courts and possible solutions to case load problems¹

A. The case load:

1. Possibilities of reliable forecasting of the case load on the basis of past experience; possibilities in which labour courts themselves can influence case load.
2. Possible indicators for and influences on case load:
 - (a) Effect of new labour laws: increased number of cases due to need for interpretation of these laws.
 - (b) Economic influences:
 - (i) weaker economy and increases in terminations of employment;
 - (ii) weaker economy leading employers to reduce labour costs (i.e. reduction in working time, reduction in wages and social benefits, etc.): possible influence on increase of individual cases as well as collective disputes.
3. Industrial disputes as a cause of caseload increase, e.g.:
 - (a) Provisional decisions to prohibit lock-outs or to order certain rules for picketing; disputes concerning the payment of wages during lock-outs or work reductions resulting from disputes; complaints concerning the behaviour of the parties during the dispute.

¹ The basic problem is one of delay in judgement owing to heavy case loads and the consequent deleterious impact on the parties and on labour relations.

- (b) Deterioration of the social climate, i.e. of the relationships between the "social partners" or between individual employers and the employees.
4. Consciousness of the law as a factor in case load increase: Subjective attitude regarding pursuit of case to the highest possible instance or willingness to compromise or to desist from further action in an early stage.
 5. Social policy, i.e. cases brought before the labour court to achieve changes in the law or reach social policy objectives through court decisions, sometimes as a part of an overall strategy.
 6. Possible impact of a situation in which lawyers (for reasons of personal income) depend on the number of cases brought before the court.
 7. Possible effect for case load of the existence of individual or collective insurance covering legal costs.
 8. Impact of legal fees and related costs on case load.
- B. Particular measures to expedite procedures¹
1. Number of judges: impact of reduced public budgets on adjusting number of judges to case load; where increases are impossible, possible solutions through improvements in supporting services of the courts to accelerate the proceedings.

¹ It can be said that the case load is a "given" fact for labour courts; it is also generally recognised that procedures should be dealt with in a limited and "justifiable" period of time, particularly so for labour law procedures which very often deal with employment relations and consequently the livelihood of families or with labour peace in entire undertakings.

Complaints about the slowness of courts are widespread and often expressed in meetings of lawyers and judges, in parliamentary debates as well as in professional journals.

Discussions about how cases facing the courts might be decided within a reasonable period mainly concentrate on the following areas:

- the number of judges;
- the theoretical (should) and the real (is) case load of judges;
- recurrent education for judges;
- technical support services for judges (typists, information possibilities, library, etc.);
- administrative support services (recording clerks, offices, etc.).

2. Existing or new possibilities to settle certain disputes before they reach the court; applicability of experiences with conciliation boards for road accidents, construction complaints, landlord and tenant cases, etc.
3. Possibility of conciliation by the labour courts and of reaching a settlement during the proceedings as a positive impact on accelerating the case itself as well as other cases.
4. Possibilities for potential plaintiffs of obtaining sound and objective legal advice at little or no cost and impact on restraining submission of hopeless cases.
5. Procedural measures:
 - (a) Influence of the attitude and/or behaviour of the parties and their lawyers (not always intentional) on the length of the process and possible reactions by the court to such behaviour.
 - (b) Number of instances or appeal possibilities; restriction on the possibility of appeal in labour matters to a few strictly defined grounds.
 - (c) Reduction of case load by the introduction of a "standard" or "example" process for a number of identical cases (e.g. dealing with one case in depth with decision legally binding for other cases).
 - (d) Possibility of dealing with a number of identical cases, for instance after a labour conflict, at the same time in one (mass) procedure.
 - (e) Use by judges of powers to limit the number of cases, i.e. to declare suits non-receivable on grounds of judicial demarcation or on other grounds.
 - (f) The contribution of improved administrative and technical support services to the acceleration of proceedings.
 - (g) Self-restraint by judges, e.g. regarding the size and length of decisions.