

**Tenth meeting of European Labour Court Judges
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The Role of Collective Bargaining

**Questionnaire
General Reporter: Judge Harald Schliemann,
Federal Labour Court of Germany**

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Preliminary remarks

The role and place of collective bargaining in both the overall legal and the industrial relations systems differ widely from one country to another. To place this discussion in context, the following contrasting patterns relating to the role of labour courts in the application of collective agreements have been taken into account in the preparation of this questionnaire:

- * collective agreements are not legally binding in some countries whereas they are in others ;
- * collective bargaining procedures as well as the legal effects of collective agreements are extensively regulated in some countries, while not in others;
- * some labour courts deal essentially with disputes arising from collective bargaining or from collective agreements, and not with individual disputes which arise from the application of a law, unless otherwise provided for in the law itself. Only unions, and not individual workers, in principle have the right to bring a case before the Labour Court;
- * collective agreements have *erga omnes* effects in some countries, and can apply to the individual employment relationships of all workers and employers included in their territorial or sectoral scope. On the contrary, in other countries they apply only to workers that are members of the unions that have signed the agreement, or to employers that are members of the respective employers' organization. Whereas extension to third parties is possible in some countries, it is not in others.

A. The legal framework of collective bargaining

Please describe the legal framework for collective bargaining in your country:

1. **Constitutional provisions**. Does your country's Constitution or Basic Law include the right to collective bargaining? If it does, please quote the relevant provisions.

Sec. 13 of the Constitution (2000) provides for the freedom of association and in this connection also the freedom to form trade unions to protect one's interests. Although the right to collective bargaining is not specifically mentioned here, it may be regarded as protected under the said provision. In addition, Sec. 22 of the Constitution contains a general duty for the public authorities to guarantee the observance of basic rights and liberties and human rights, also those relating to trade union activity as protected under the relevant international treaties.

2. **Legislation:**

a. Please, indicate if collective bargaining in your country is regulated by:

- i) the Labour Code or a general labour law (e.g. the Workers' Charter in Spain)
- ii) a law on collective bargaining yes
- iii) a framework (central) agreement

b. If your country does not have a law on collective bargaining, is this subject dealt with under civil law? (for example the Civil Code or the Code on Obligations)

c. To what extent have the labour courts played a decisive role in framing the right to collective bargaining and in determining the legal effects of collective agreements?

The role of the Labour Court is, by large, confined to the application of the Collective Agreements Act (1946) in which the basic rules on collective bargaining are codified.

3. **Types of collective agreements:**

a. Are there differences or distinctions between “collective agreements” at national, regional or sectorial level (the German “Tarifvertrag”), i.e. collective agreements whose parties are trade unions and (associations of) employers; and “enterprise collective agreements” at the enterprise level (the German “Betriebsvereinbarung”), i.e. collective agreements between the works council and the enterprise?

The law does not make a difference between collective agreements made by nationwide federations, on the one hand, and local agreements concluded between a trade union and a single employer, on the other. At the top of the system the central labour market organizations enter into general agreements which are not intended to become binding as such. They are implemented by making them part of federation-level agreements.

In addition to collective agreements *proper* there are contractual agreements made within the consultation procedure regulated by the Cooperation Within Undertakings Act (1978). In line with the relevant EC Directives, the employer must consult business restructurings and other major changes in his business with the affected employees or their representatives “with a view of reaching an agreement”. The counter party to such an agreement is often a shop steward representing a group of employees. Pursuant to the Act, the employer may shorten statutory negotiation periods by entering into an agreement on the conditions of the planned measure. The legal effects of the material content of the agreement are not regulated in the Act, but in the main the effects are comparable to those of an employment contract.

b. Are there any other types of collective agreements in your country? Please specify.

It is common in collective agreements to refer certain matters to be agreed upon locally, or to allow derogations to be made by means of local agreement. Such enterprise level agreements are concluded between the firm and the local trade union or a shop steward representing the union, or sometimes even individual employees. Legally, such agreements are regarded as extensions of the original agreement, or, as the case may be, independent contracts.

4. **Conditions of validity of a collective agreement:** Does the law provide for certain requisites to be filled for a collective agreement to become legally binding, such as the following:

- a. Governmental approvalno.....
- b. Registration?no.....
- c. Publication?no.....
- d. Other?.....

For a collective agreement to be valid, is its conclusion enough?yes.....

5. **Effects of a collective agreement:** To whom are collective agreements and/or enterprise collective agreements or work agreements binding or compulsory? Are they related to union membership and/or to the association of employers?

A collective agreement is binding upon the parties to the agreement, i.e. an employer or an employers' association or a trade union. In addition, the member associations and the member employers and employees are bound by the agreement. An individual employer or employee will remain within the scope of the agreement until the end of the agreement period even if his or her membership to an association, which is a party to the agreement, ceases.

An employer bound by a collective agreement shall apply its terms to non-unionized employees performing work covered by the agreement.

6. **Extension of collective agreements:** In your legal system, is it possible to extend a collective agreement to non members of the employers' association that has signed it so that it can have *erga omnes* effects in a branch of industry or a sector? yes

a. Is extension frequently or rarely used in practice?

Ca. 140 collective agreements are declared as generally applicable in Finland.

b. When extension is possible:

- i) what procedure has to be followed for an agreement to be extended to third parties?

The procedure for declaring a collective agreement to be generally applicable is regulated in a specific Act passed in connection with the new Employment Contracts Act (2001). A special tripartite board makes the decision which can then be challenged in the Labour Court. Under the Employment Contracts Act, the general applicability of collective agreements presupposes that the agreement is nation-wide and can be deemed as representative in the field in question. In the consideration of the said criteria several factors are taken into account, the point of departure being that about one-half of the employees in the field concerned are covered by the agreement already by virtue of the Collective Agreements Act. If the criteria are fulfilled and the agreement is declared as generally applicable, its terms shall be followed as minimum conditions by all employers in the field, regardless of their membership in an employers' association. Only employers bound by another collective agreement, concluded with a nation-wide trade union, are exempted from this duty.

- ii) what is the usual coverage of an extended collective agreement (i.e. a province, a region, the whole state)?

The agreement is always national, covering the whole field or craft in question.

B. The parties to collective bargaining

7. Who are the parties of collective agreements? Trade unions? Associations of Trade Unions and /or works Council (the German “Betriebsrat”) on the one side? Employers, enterprises, associations of employers on the other side? Who else?

On the employee side, the party to a collective agreement is always an association (a trade union or a federation). On the employer side, also a single employer may appear as a party.

8. Workers’ representation by a trade union:

- a. Is trade union representativeness an important issue in your country?

No, except in the context of generally applicable agreements, as explained above.

If so:

- i) how is the representativeness of a trade union for collective bargaining purposes determined at the different bargaining levels (i.e. the establishment, the enterprise, the industry or branch of economy, an occupational group or at national central level)? -
- ii) what procedures are available to settle disputes, when trade union representativeness has been challenged? Are Labour Courts competent to settle disputes on union recognition or union representativeness for collective bargaining purposes? Is this an important issue in your country? -

- b. Where there is trade union multiplicity:

- i) how organized is the workers’ representation for collective bargaining purposes?

The level of organization of employees is traditionally high in Finland, ca. 80 per cent. A common situation is also that there is only one major trade union representing the employees working in a given field or craft. There may, however, be professional groups which could be represented by more than one trade union. These employees can then choose between rivalling unions.

- ii) can minority unions claim collective bargaining rights? Is this an important issue in your country? Does your country have a case law on this issue?

All unions have in principle the same bargaining rights. There is no regulation and thus no case law on this point. It is also common that an undertaking is bound by several collective agreements concluded with unions representing different groups of employees (such as construction workers, electricians, technical staff, etc.). In manufacturing industries the federations are, however, usually formed on an industrial basis and endeavour to represent all the employees of the industry regardless of profession.

- iii) can a union join an existing collective agreement to which it has not originally been a signatory party? If it can, what rights does a union enjoy as a result of its adhesion to that agreement. For example, is the union recognized as *locus standi* before a tribunal to engage in litigation in case of breach of a collective agreement?

Such an adhesion is possible in written form and with the consent of the original parties to the agreement. The union will then gain all the rights and duties of a signatory party, including *locus standi*.

- c. Can a union represent non unionized workers for collective bargaining purposes?

Yes, in the sense that a collective agreement is as a rule applied also to non-unionized workers performing work covered by the agreement.

- d. Can a collective agreement be applied to non union members? Yes, see above.

- e. What procedural rights and obligations are granted to Trade Unions that have signed a collective agreement? For example

- i) can they initiate litigation on the workers' behalf? Yes
- ii) can they initiate litigation on their own behalf? Yes
- iii) others.....

- f. What procedures and recourses are available in your country for unions or employers to demand the enforcement of an agreement by the other party?

As regards unions and employers bound by a collective agreement, all claims based on the agreement are handled by the Labour Court. The party to the agreement acts as the plaintiff. For instance, if the claim is based on an agreement made between federations, it is the regularly the federation that appears as a party to the lawsuit on behalf of its member. According to most collective agreements, proceedings at the Court must, however, be preceded by a grievance procedure. This means that the dispute shall first be negotiated at the level of the undertaking and then between the federations, and only if a settlement is not reached in these negotiations can the case be brought before the Court.

The dispute may relate to an alleged violation of the agreement, but quite often the claim merely aims at a declaratory judgment clarifying the interpretation of the agreement and not requiring any further enforcement.

- g. What remedies are available when it is held that one of the parties is in breach of a collective agreement by which it is legally bound? For example, can a labour court impose a fine or issue an injunction in these cases?

An employer, whether party to the agreement or otherwise bound by it, may be ordered pay a compensatory fine to the wronged party if found guilty of violating the provisions of the agreement. The violator must have acted intentionally or he must have had reason to know that his action constitutes a violation. The maximum amount of the fine is EUR 22 000. Furthermore, associations which are parties to the agreement are under a statutory surveillance duty involving an obligation to see to it that their members follow the clauses of the agreement. If the surveillance duty is violated intentionally or negligently, a compensatory fine may be imposed.

As a statutory sanction, the compensatory fine may be modified or replaced with another remedy if so agreed in a collective agreement. Unfair dismissals on individual grounds are a typical example. The collectively agreed sanction is a compensation amounting to at least three and at most twenty-four months' wages to be paid to an employee whose employment contract has been terminated without a valid ground.

9. Work agreements concluded by a non union body:

- a. For your country, please indicate whether there are legal or collectively agreed rules that provide for the representation of all workers, at enterprise or establishment level, by a body elected by all the workers of the enterprise or the establishment whether unionized or not (e.g. works councils, enterprise committees, shop stewards, staff delegates). If such bodies exist, how are they appointed or elected?

Within the system for workers' representation in matters concerning health and safety at work, workers have a statutory right to elect a *safety representative* and part of the members of a *safety committee*. The general workplace participation is organized on the basis of collectively agreed rules on workers' representation, in practice the shop steward system. However, if a group of workers does not have a shop steward, it has a statutory right to elect a representative of its own. The Employment Contracts Act (2001) has introduced a provision according to which non-unionized employees who are not represented by a shop steward have a right to choose a special elected representative. Such representatives are entitled to any information and release from work obligations which is necessary for carrying out their tasks. They may also represent employees in concluding contracts regarding certain working time arrangements, as provided for in the Hours of Work Act (1976).

Compared with collective bargaining, contractual activity within the systems mentioned here is of minor importance. See, however, the answer given above in 3.a.

- b. What kind of relationship - legal or *de facto* - exists between these bodies and the unions?

With the exception of safety delegates, the workers' rights to elect representatives, discussed above, are subsidiary to the shop steward system. Thus, if a shop steward is elected to represent a particular group of workers on the basis of a collective agreement, he or she will also represent non-unionized workers belonging to that group.

As a result of high union density and established collective relations in the labour market, also most safety delegates are in practice active trade union members.

- c. What specific competences do these bodies have, and to what extent can they negotiate collective agreements, or other legally binding agreements such as work agreements (*Betriebsvereinbarung*)?

See above in a.

- d. Are enterprise collective agreements or work agreements common in your country?

Yes, local collective agreements are commonly made.

- e. Do these agreements include rules or procedures to settle disputes concerning their interpretation or application?

In case such an agreement has become part of a federal collective agreement (“reference agreement”, see above in 8), the grievance procedure laid down in the latter agreement is applied.

- f. Can these agreements be enforced before a Labour Court? Yes

If they can:

- i) who can bring litigation before the Court? (e.g. a union, a works council, the individual worker)

In line with the general rules, parties to the agreement in question are authorized to present a lawsuit before the Labour Court. Here again we must distinguish between the case where the local agreement is part of a federal reference agreement, and the case where a local agreement has been concluded independently, i.e. without a connection to a federal agreement. Only in the latter case can the local parties appear before the Court as plaintiffs or defendants.

What is said here (and below) presupposes that we are dealing with a collective agreement, as defined in the Collective Agreements Act.

- iii) what measures can a labour court take to enforce these agreements?

The normal rules on compensatory fine apply.

C. The role and (political) importance of collective agreements

10. If data are available, please provide information on the following:

- a. The number of collective agreements that are in force in your country;

A rough estimate is 800 federal agreements complemented with a large number of local agreements.

- b. Their distribution, according with their coverage:

- i) sectorial, industrial, and enterprise level agreements;
ii) national, regional, provincial or local agreements;

Agreements with a scope specified geographically are exceptional.

- iii) the percentage of the workforce that are covered by collective agreements;

95 per cent of the workforce are covered by normally binding or generally applicable collective agreements.

- iv) the percentage of enterprises that are covered by collective agreements.

60 per cent.

11. What subjects are generally addressed in collective agreements, or in work agreements concluded with works councils or other staff representation bodies?

- | | | |
|----|--|-------------|
| a. | Terms and conditions of employment? (e.g. wages, overtime, hours of work, job classification) |X..... |
| b. | Provisions concerning the contract of employment: hiring, probation, discipline, fixed-term contracts, termination of employment, other? |X..... |
| c. | Health and safety? |-..... |
| d. | Training? | X... |
| e. | Workers' welfare |-... |
| f. | Workers' rights in the enterprise: right of expression, data protection, other? | -... |
| g. | Trade union rights and facilities to be afforded to union stewards? |x |
| h. | Settlement of disputes? |x..... |
| i. | Peace obligation? |x..... |
| j. | Interpretation and administration of the agreement? |x..... |
| k. | Procedures for denunciation and renewal of the agreement? |x..... |
| l. | Other? | |

12. Which of the above subjects are normally addressed by collective agreements concluded with a union, and which by work agreements between an employer and staff representatives (i.e. works councils or the like)?

As for collective agreements and local agreements based on them, see above in 11.

Agreements concluded with staff representatives within the system of employee participation mainly concern effects of workforce deductions, such as redundancies or lay-offs.

13. Which issues are governed only by law and / or are not allowed to be dealt with in collective agreements or work agreements?

Under law, a collective agreement must contain clauses on conditions to be observed in employment contracts or otherwise in employment relationships. In addition to these so-called normative clauses, the agreement may contain obligatory clauses which regulate the rights and duties the contracting parties have vis-à-vis each other.

The definition of a collective agreement is interpreted very widely, comprising all clauses which have a reasonable connection to the employment relationship. An agreement clause may of course not contradict with mandatory law.

A collective agreement may not contain provisions regulating employer's relations with outsiders, such as business partners, clients etc.

In practice, agreement stipulations on health and safety at work are not common, as this area is comprehensively governed by mandatory law. On the other hand, pay issues, especially the amount of pay, are only scarcely regulated in labour legislation, and are therefore a central area of collective bargaining.

Specific rules apply to collective agreements which are concluded in the public sector and apply to employment relationships governed by public law (civil servants, officials of municipalities etc.). These agreements may only regulate the basic terms and conditions of employment relationships.

14. In collective agreements, are the wages and other conditions of employment minimum or standard terms of employment?

Minimum terms.

D. The role of Labour Courts in the collective bargaining process

15. By what means are collective agreements achieved? (Bargaining, or if not successful, striking, or by taking another industrial action? Mediation? Arbitration?)

Collective agreements are mainly achieved upon bargaining between the negotiating parties. Quite often there is a nation-wide incomes policy agreement, concluded between the national confederations, which forms the basis of federation level agreements. If the negotiations seem to fail and a threat of industrial action is presented, the National Conciliator Officer comes to play. The dispute may then be solved in a mediation procedure which often results in a draft settlement presented by the Officer. Sometimes an agreement is not reached until after a strike or other industrial action.

16. Can a labour court stop a strike or other form of industrial action:

a. While negotiating a collective agreement? No

If it can, how does it proceed (for example, by issuing an injunction)?

b. Where such action is in breach of the peace obligation? No. Only a compensatory fine may be ordered, and, if necessary, repeated.

17. Can a labour court mediate in a collective dispute? No

18. Can a labour court impose binding arbitration? No

E. Interpretation of collective agreements by the labour courts

19. Are there rules of interpretation of collective agreements (Interpretation as a <written> law? Interpretation as a treaty? Interpretation with respect to the usual practice?)

The general rules on interpretation of collective agreements are based on established practice. In addition, collective agreements quite often contain, or are complemented with, advisory remarks drawn up by the contracting parties to give guidance on how the agreement or its individual clauses are to be applied.

20. Is there any ranking between the wording, motives, sense of a clause or term in a collective agreement?

The highest priority is accorded to the common intention of the contracting parties.

21. Is it common, allowed or prohibited, that a labour court asks the parties of the collective agreement for their interpretation?

It is regular practice that the parties, which also appear as parties in the litigation, express their views on how the agreement is to be interpreted.

22. Is a labour court allowed to extend or restrict the rules or terms of a collective agreement?

An extension may take place only within the limits of the general rules of interpretation. A restriction is possible if warranted by rules of mandatory law.

23. How much or how often (in relation to other cases) do labour courts deal with the interpretation of collective agreements?

The competence of the Finnish Labour Court is confined to disputes arising from collective agreements. So this is our daily bread.

24. Are labour courts allowed to void a “not interpretable” (i.e. extremely unclear) term of a collective agreement?

No. If it is found that a matter is regulated in a clause of a collective agreement, however unclear, and the claim is based on that clause, the Court is under a duty to establish the content of the clause and decide the case.