

**Twelfth Meeting of European Labour Court Judges
Budapest, 8 et 9 septembre 2004**

Do we need labour courts?

Questionnaire

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France**

For questions 1 to 7, please provide *complete information* if you so wish and particularly if you did not attend our meeting in Jerusalem (2000), or only indicate the *important changes produced* in your country since then.

1. Is there a specialised jurisdiction for labour conflicts in your country?

Yes

2. If such a jurisdiction exists, what is its competence? Does it have competence for:

Collective labour conflicts?	Some
Individual labour conflicts?	all
Any other area of possible competence? If so, please indicate.	
In some cases labour court have to give legal advice.	

3. Is this competence exclusive, or can some tribunals (other than labour tribunals) also be accessed?

Generally an exclusive competence, but in individual conflicts its possible to agree upon arbitration.

Furthermore there exist Mediation boards. They are competent in the area of so-called enforceable works agreements: If in special matters listed in the Collective Employment Regulatory Act no works agreement is reached between an establishment's owner and its works council about the conclusion, changing or cancellation of a works agreement, the mediation board mediates between them at the request of one of the parties to the dispute making suggestions, striving for agreement, and where necessary making a ruling. The ruling is then valid as a works agreement.

The Federal Conciliation Board is competent for the custody of all tariff agreements, qualifications for collective bargaining, negotiations between parties of tariff agreements,

rendering of opinions of interpretations.

There is also some Jurisdiction of the **Administrative Court** for instance in labor matters regarding protection of labour, disputes between public civil servant and the state and in social insurance to unemployment insurance.

4. Is it a first instance jurisdiction (as in France, where the conseils des prud'hommes were created in 1806)? What is its composition?

In general there exist four levels of courts, where civil matters are adjudicated; ie the district court, the courts of the federal provinces, the higher regional court and the Supreme Court in Vienna.

In labour and social insurance matters we have three-levels, ie

1. the Courts of the federal provinces –only Vienna has got a separate court, the Labour and Social-Security Court of Vienna-,
2. the Higher Regional Courts and the
3. Supreme Court in Vienna.

In the first instance there are the Courts of the federal provinces. In Labour and social Security matters there are special Benches, which are composed of one professional judge as presiding judge and two lay judges, coming from the ranks of the employers and employees

When adjudicating labour and social insurance law matters the courts of the first instance have to add in their designation “acting as labour and social-security courts” while the courts of the second instance and the Supreme court add “concerning cases under labour and social security law”.

Each case in labour disputes has to be brought to the Courts of the federal provinces acting as labour and social security courts. The appeal (called “Berufung”) goes to the Higher Regional Courts. The appeal against the decision of the Higher Regional Court has to be brought - if allowed at all - to the Supreme Court.

5. In the case of appeal, is there a labour court also? What is its composition?

In the second instance the Higher Regional Courts have jurisdiction.

The Higher Regional Courts decide with three professional judges and two lay judges coming from the ranks of employers and employees. In general: The second instance - Regional Labour Court - is responsible for questions of facts and questions of law and the lay judges decide - with the professional judges - on both questions.

6. Is there a labour court at the highest level (similar to cassation)? What is its composition?

The third instance is the Supreme Court in Vienna. Now there are two benches which adjudicate labour matters and one which is competent for social insurance matters. These panels of judges consist of three professional judges and two lay judges (Section 11 of the Labour and Social-Security Act). In some exceptional cases the so called Strengthened Senat has to decide, which comprise seven professional judges and four lay judges. The third instance - Supreme Court - is only responsible for questions of law; so lay judges

decide in this instance - like the professional judges - only on questions of law.

7. What was the reasoning behind the creation of the labour jurisdiction? When did it take place?

One of the main points of the Labour and Social Security Courts Act (Federal Law Gazette No 1985/104) was to streamline the existing scattered competences by integrating all kind of labour jurisdiction in the ordinary court system but to maintain special benches and procedural provisions. One important aspect are lay judges.

8. What is the dominant opinion of the “working” of the labour jurisdiction? Are there any plans to reform it, and if so please give details.

Recently there have been some reforms which allow the access to the third instance then Supreme Court only in cases of general importance.

9. Particularly in countries where the competence to deal with *individual* labour conflicts is given to the ordinary judge, is there a movement tending to say that it would be more justified that this competence be given to the labour judge?

We already have got labour judges

Particularly in countries where the competence to deal with *individual* labour conflicts IN APPEAL is given to the ordinary judge, is there a movement tending to say that it would be more justified that this competence be given to the labour judge?

We have special benches for labour jurisdiction.

11. In the event that labour courts do not exist in your country, is their creation foreseen? If so, in what form?

See above

12. Is there a preliminary procedure of conciliation to be followed before the first instance labour court can be accessed?

There is no compulsory procedure of conciliation. Only in some collective agreements you can find provisions.

13. Is there a particular procedure ensuring access to the specialised jurisdiction at any instance (1st or 2nd instance, or cassation)? If so, please explain its particularities or are normal procedures followed?

The Labour and Social Security Courts Act (Federal Law Gazette No 1985/104) ensures the access to specialised benches of judges in all instances.

14. Do you have any further comments to add?

No.