

**Dixième réunion des Juges des cours européennes du travail
Tenth Meeting of European Labour Court Judges**

Stockholm, 2 September 2002

**Juges Sociaux Des Tribunaux Ou Des Cours Du Travail
Labour Court Lay Judges**

Questionnaire

BELGIUM

**General Reporter: Judge Peter Clark, Employment Appeal Tribunal
Audit House
London, Great Britain**

**National Reporter: Counsellor Christian Storck,
Court of Cassation**

- 1 La cour d'appel du travail de votre pays comprend:
Does your Appellate Labour Court (ALC) is comprised of:
- (a) un ou plusieurs juges professionnels seulement ? ☐
a professional judge or judges only?
 - (b) des juges sociaux seulement ☐
lay judges only?
 - (c) un ou plusieurs juges professionnels et deux ou plus ☐
 - (d) juges sociaux (modèle tripartite)
the tripartite model; ie professional judge(s)
plus two (or more) lay judges?
- 2 Quelle est la composition de votre tribunal ou cour de travail de première instance?
What is the composition of your first instance Labour Court?

In Belgium, there is a labour tribunal in each of the twenty-seven judicial districts. Appeal against decisions of the labour tribunal is to the labour court. There are five labour courts.

All decisions of the labour court may be referred to the Court of Cassation, which is the only one for the whole kingdom, and whose thirty members must have exercised judicial functions in a labour court or labour tribunal for at least five years.

Like the labour court, the labour tribunal, as a rule, consists of a professional judge and two lay judges

- 3 Y-a-t-il des projets ou des propositions en cours pour modifier la composition des cours d'appel du travail? Si tel est le cas, quels sont ces plans ou ces propositions ? Depuis combien de temps la composition actuelle de ces cours est-elle en place?
Are there any plans or proposals currently in place to alter the composition of your ALC? If so, what are they? For how long have the present arrangements been in place?

The organization of labour jurisdictions was established by the Judicial Code, article 1 of the Law of 10 October 1967.

These jurisdictions came into effect on 1 November 1970.

Although the issue is regularly aired as to whether the labour court should be reformed by establishing greater synergies between it and the court of appeal, there are at present no plans or proposals to alter their composition.

- 4 Si dans vos cours, des juges sociaux siègent avec des juges professionnels :
If lay members do sit in your court with professional judges:

- (a) y-a-t-il des instances d'appel dans lesquelles des juges professionnels
are there any types of appeal on which professional judges

- (i) peuvent siéger sans les juges sociaux? ou
may sit without lay judges? or

No

- (ii) doivent siéger sans les juges sociaux?
must sit without lay judges?

Under article 52, 3, paragraph 3 of the law on compulsory health insurance and compensation, promulgated on 14 July 1994, the labour court, like the labour tribunal of first instance, is composed of only one professional judge when hearing a dispute concerning an agreement on financial and administrative arrangements between insurers and healthcare providers.

- (b) les juges sociaux peuvent-ils (elles) décider seulement des questions de droit, ou des questions de droit et de fait, ou de fait aussi, suivant la compétence de la juridiction d'appel ?
are lay judges required to adjudicate on questions of law, facts, or on questions of law and facts as well under the terms of the ALC's jurisdiction?

The lay judges decide with the professional judge all questions of law and all questions of fact raised in the litigation before the labour court.

- (c) les juges sociaux peuvent-ils(elles) prévaloir sur le ou la juge professionnel (le) dans la prise de décision ?
can the lay members outvote the professional judge in decision making?

In principle, the vote of the lay judge has the same value as that of the professional judge, so that the latter may be in the minority.

In practice, the professional judge's vote, on questions of law at least, carries a certain additional weight.

- 5 Y-a-t-il une exigence suivant laquelle au moins un des juges sociaux doit avoir une expertise particulière sur certain types de cas, tels que la discrimination (basée sur la race, le sexe ou un handicap)?

Is there any requirement that at least one lay judge sitting on the panel has particular expertise in a given type of case, eg discrimination cases (race, sex, disability)?

No.

- 6 Est-ce qu'il y a une politique de nomination des juges sociaux provenant de chacun des partenaires sociaux ? Si tel est le cas, est-ce que dans la pratique on fait siéger systématiquement un membre employeur et un membre travailleur pour chaque affaire?

Is there a policy of appointing lay judges from each of the social partners? If so, is it the practice to draw one member from each background to sit with the professional judge on each appeal?

Under article 199, paragraph 1 of the Judicial Code, in order to fill vacancies for lay judges nominated as an employer, worker, employee or self-employed, candidacies are put forward by representative employers', workers', employees' and self-employed workers' organizations as the case may be.

The composition of chambers is fixed according to the nature of cases.

Chambers dealing with litigation involving labour law are composed, apart from the presiding judge, by a lay judge appointed as employer and a lay judge appointed as worker or employee, depending on the category of worker concerned. When the litigation raises the question of this category, the chamber, of five magistrates, is composed, in addition to the presiding judge, of two lay judges appointed as employers, a lay judge appointed as worker and a lay judge appointed as worker or employee.

Chambers dealing with litigation concerning social security of employed workers are composed, in addition to the presiding judge, of one lay judge appointed as employer and one lay judge appointed as worker or employee.

Chambers dealing with litigation concerning self-employed workers are composed of two professional judges and one judge appointed as a self-employed worker.

Chambers dealing with litigation concerning the disabled are in addition to the presiding judge, composed of one lay judge appointed as employee and one lay judge appointed as self-employed worker.

In addition, when the litigation concerns a child worker, seafarer, sea-fisherman, boatman, dockworker or member of overseas social security, the lay judge must, as far as possible, belong or have belonged to the same category as the worker concerned.

- 7 Comment sont sélectionnés les juges sociaux ? Par concours ouvert, recommandation des secteurs concernés, désignation administrative, ou autrement?
How are lay judges selected for appointment; is it by open competition, recommendation by interested bodies; administrative appointment or otherwise?

Lay judges are appointed by the King on the recommendation of the minister responsible for labour affairs.

Lay judges nominated by self-employed workers' organizations are appointed on the recommendation of the minister whose responsibilities include the middle classes.

For the system of nomination of candidates by representative organizations, please refer to the answer to question 6 above.

- 8 Quelle est la durée du mandat des juges ? Ce mandat est-il renouvelable ? Dans quelles circonstances, outre l'âge et la santé, les juges peuvent-ils être démis de leurs fonctions ou voir leur nomination ne pas être renouvelée ?
For what period of time are lay judges appointed? Are such terms renewable? In what circumstances, other than age or ill health may they be removed from office or their appointments not renewed?

The term of office of lay judges is five years, renewable.

The term of office is not renewable if the lay judge ceases to be nominated by a representative organization.

Negligence in the exercise of the mandate could justify an opinion by the judicial authorities against renewal.

- 9 Quelle formation en droit et en procédure est donnée aux juges sociaux des cours d'appel du travail ?
What training in law and procedure is given to lay judges of the ALC?

None

- 10 Les juges sociaux ont-ils (elles) des positions divergentes: fréquemment, parfois ou rarement? Voient-ils (elles) leur rôle comme celui de juges indépendants ou comme celui de représentants de leur secteur d'activité ?
How often do the lay judges disagree? Is it often, sometime or rarely? Do they see their role as that of independent judge or representative of 'their' side of industry?

Experience suggests that lay judges act as independent judges.

- 11 Quels avantages et quels inconvénients voyez-vous à la présence des juges sociaux dans les cours d'appel du travail ?
Do you perceive there to be (a) advantages and (b) disadvantages in sitting with lay colleagues in the ALC? If so, what are they?

a) Avantages
advantages and

Lay judges provide the professional judge with their experience of the world of work.

In addition, many of them, being active in representative organizations, are familiar with the development of instruments such as collective agreements, indeed regulations in general, and can thus contribute useful information on the origin and scope of such texts.

b) Désavantages
disadvantages in sitting with lay colleagues in the ALC?
If so, what are they?

Generally, no disadvantages to sitting with lay judges are indicated.

- 12 En général, d'après votre expérience trouvez-vous que l'administration de la justice dans les cours d'appel de votre pays a été améliorée ou, au contraire, a empiré avec la présence des juges sociaux, comparativement à la situation où il n'y aurait que des juges professionnels? Pourquoi arrivez-vous à une telle conclusion ?
Overall, from your experience do you believe that the administration of justice in your ALC is improved or impaired by the presence of lay judges as opposed to professional judge(s) sitting alone? Please say why you reach your conclusion.

It can be considered that the administration of justice has been improved by the presence of lay judges.

Labour jurisdictions which, generally, do not have any drawbacks, are well viewed by the public. They are jurisdictions seen as highly user-friendly to the parties. Moreover, no loss of judicial value has been observed in the decisions.