

**Tenth Meeting of European Labour Court Judges
Stockholm, September 2, 2002**

**Lay Judges
Questionnaire**

FINLAND

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

**National Reporter: by Pekka Orasmaa,
President of the Labour Court**

1 Does your Appellate Labour Court (ALC) comprise of:

- (a) a professional judge or judges only?**
- (b) lay judges only?**
- (c) the tripartite model;**

ie professional judge(s) plus two (or more) lay judges?

The Finnish Labour Court is a single specialized court for matters connected with collective agreements. It is both the first and the last instance. The Labour Court is an appellate court only in matters concerning declaring a collective agreement to be generally applicable. A special board makes the decision as the first instance and an appeal lies with the Labour Court.

The Labour Court comprises of the tripartite model.

2 What is the composition of your first instance Labour Court?

The Labour Court is composed of four neutral members, with the president and vice-president among them, four employers' members, four employees' members and four additional members for cases concerning public officials. There are two substitutes for each member, except for the president and the vice-president.

The Labour Court regularly sits in panels of two neutral members, two employer's employees' members. The chairman can decide a simple and straightforward issue which does not require the hearing of witnesses. Important issues of principle can be handled at a plenary session attended by the President as chairman, the vice-president and ordinary members.

As an appellate court the Labour Court sits in panels of three neutral members, one employers' member and one employees' member.

3 Are there any plans or proposals currently in place to alter the composition of your ALC? Is so, what? For how long have the present arrangements been in place?

Right now there are not any plans to alter the composition of the Labour Court. The present arrangements have been in place from 1983, but special composition as an appellate court is from 2001. The lay judges have been part of the composition from 1947, when the Labour Court started functioning.

4 If lay members do sit in your court with professional judges: are there any types of appeal on which professional judges alone, may or must sit without lay judges?

No.

(a) are lay judges required to adjudicate on questions of law only, or on questions of fact/mixed law and fact as well under the terms of the ALC's jurisdiction?

Lay judges in the Labour Court are required to adjudicate both on questions of law and fact.

(a) can the lay members outvote the professional judge in decision making?

Yes, in principle, but it seldom happens in practice.

5 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)?

In cases concerning public officials there are special members from employer and employee side representing special expertise in public sector.

6 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?

Yes, see above in 2.

7 How are lay judges selected for appointment; is it by open competition, recommendation by interested bodies; administrative appointment or otherwise?

The employers' and employees' members, as well as their substitutes, shall be appointed upon the nomination of the most representative confederations of employers and employees, respectively. Members who must be familiar with the employment relationships of civil servants are appointed upon the nomination of the public authorities (State, municipalities, etc.) and the most representative confederations of civil servants. In the nominations have to be nominated twice as many candidates as there are members to be nominated. The neutral members are selected for appointment by open competition and appointment takes place upon presentation by the Ministry of Justice.

8 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?

All members of the Labour Court and their substitutes are appointed by the President of the Republic for a term of three years. They may be reappointed.

The lay members have the same independent position as judges in general. They can be removed from office only by the decision of the Court.

The appointment of lay members normally happens following the nomination of confederations. It is possible and not quite unusual that a member will not be nominated as a candidate for reappointment.

9 What training in law and procedure is given to lay judges of the ALC?

According to the law the employers' and employees' members must be familiar with labour matters. Four members must be familiar with the employment relationships of civil servants, both government and local authority employees.

High officials of the main organizations of employers and employees usually serve in these posts. Neutral members are mostly judges, professors or legislators. So they are professionals in matters under LC's jurisdiction and they do not need any special training in labour law. In the beginning of every 3-year period all the new members are trained in procedural and practical matters by the Labour Court.

10 How often do the lay judges disagree? Is it often, sometime, rarely? Do they see their role as that of independent judge or representative of 'their' side of industry?

The role of the lay judges in the Labour Court is very challenging. They are selected to bring thoughts and attitudes of employer or employee side to the decision making process, but at the same time they are expected to act like an independent judge. Individually judges are, of course, different, but it is clear that almost all of them see their role mainly as independent judge. About 80 per cent of all the decisions are unanimous. It is not typical that members vote as block; mostly only one member disagree.

11 Do you perceive there to be

a) advantages and

One reason to establish the Labour Court was that 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. It was also estimated that a separate labour court of exceptional

composition would be able to gain the confidence of the labour organizations more easily than ordinary courts of law. These grounds seem to be still, more or less, relevant. Special court must have special knowledge in matters belonging to its jurisdiction. Lay judges in the Labour Court are in role of experts and that is why their role in decision making is very important.

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

The presidency and the vice-chairmanship of the Labour Court are full-time posts. Other members of the court have their full-time duties elsewhere. This is why the bureaucracy is maybe more complicated than in ordinary courts of law. Modern information technology has, however, facilitated the situation. So “problem” is part time work, not lay judges.

12 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.

The Finnish Labour Court has expertise in labour law and collective bargaining. Considering the jurisdiction it is hard to believe that professional judge(s) sitting alone could have better qualifications to decide the cases.