

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

The Role of Collective Bargaining

Questionnaire

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

BELGIUM

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

**With the assistance of Mr. David De Roy, auditor, attached to the French Section of the
Social Chamber of the Court de Cassation.**

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.

The Belgian Constitution enshrines the right to collective bargaining as one of the guarantees related to the right to lead a life consistent with human dignity.

This guarantee is set out in article 23 of the Constitution which provides:

"Everyone has the right to lead a life consistent with human dignity.

To that end, the laws, decrees or regulations to which article 134 refers shall, taking into account the corresponding obligations, guarantee economic, social and cultural rights and determine the conditions under which they may be exercised.

These rights shall include, in particular:

- 1. the right to work and freely to choose a professional activity in the framework of a general employment policy intended, inter alia, to ensure the highest and most stable level of employment possible, the right to fair conditions of work and remuneration, and the right to information, consultation and collective bargaining;*
- 2. the right to social security, health protection and social, medical and legal assistance;*
- 3. the right to decent housing;*
- 4. the right to protection of a healthy environment;*
- 5. the right to cultural and social development".*

2. Legislation:

a. The basis of collective bargaining

The legislative framework of collective bargaining is essentially constituted by the Collective Agreements and Joint Commissions Act, 5 December 1968¹.

Other provisions regulate the composition, powers and procedures of organs within which collective agreements are concluded or, more generally, collective bargaining is conducted (National Labour Council, joint commissions, trade union branches,...)

b. Not applicable.

c. Role of labour courts played in framing the right to collective bargaining, and in determining the legal effects of collective agreements?

Labour courts have not played a particular role in this area.

It should, however, be noted that the Council of State in Belgium has recognized the regulatory nature of collective agreements concluded within a joint body. The Belgian Court of Cassation considers as "law" in the material sense (i.e. laying down general, abstract and impersonal rules) regulatory provisions of a collective agreement whose binding force has been extended by royal decree², with the consequence that a violation may be invoked by a means of appeal.

3. **Types of collective agreements:**

i) Are there are 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 distinction does not appear relevant to the situation in Belgium. Collective agreements pertain exclusively to the first category (although the Belgian and German systems are comparable).

ii) Are there any types of collective agreements in your country? Please specify.

In the area of collective labour relations, there are no types of agreement other than collective agreements, to which the whole of this report refers.

In other areas, certain collective agreements can however be found. For example:

- *in fiscal matters: in some economic sectors, flat-rate bases of taxation may be the subject of agreements between the tax authorities and the professional groups concerned (Income Tax Code 1992, art 342).*

¹ Moniteur Belge (official journal), 15 January 1969

² On the extension of the binding force of a collective agreement, see below.

- *In social security: financial and administrative arrangements between the beneficiaries and the insurers, on the one hand, and the service-providers, on the other, are governed by agreements (Health Insurance and Benefits Act, 14 July 1994, article 42 and following)*

4. **Conditions of validity of a collective agreement:**

The conclusion of a collective agreement must meet certain requirements as to form laid down in the law of 5 December 1968:

- ***An agreement that is not in writing is void (art.13, para.1)***
- ***Language requirements***

The agreement shall be in French and Flemish. However, it may be drawn up in the language of the region when it relates exclusively either to the French-speaking region, the Flemish-speaking region or the German-speaking region (art.13, para 2).

- ***Requirements concerning signature of the contracting parties:***

The agreement shall be signed by the persons that concluded it on behalf of their organization or in their own name. Such signatures may be replaced:

- 1. by a statement that the President or Secretary of the joint body has signed the minutes of the meeting approved by the members;*
 - 2. by the signature of a member of each organization represented in the joint body within which the agreement was concluded;*
 - 3. by the signature of the person who mediated between the parties in the course of a labour dispute and who affirms that the parties have indicated their consent to the memorandum of conciliation (art.14).*
- ***The agreement must also contain certain compulsory matters, set out in article 16:***
 - 1. the name of the organizations concluding it;*
 - 2. the name of the joint body, if the agreement is concluded within such a body;*
 - 3. the identity of the persons concluding the agreement and, if concluded outside a joint body, the capacity in which such persons act and, if applicable, the post they occupy in their organization;*
 - 4. the persons, branch of activity or enterprises and the geographical area to which the agreement applies, unless it applies to all employers and workers covered by the joint body within which it is concluded;*
 - 5. the period for which a fixed-term agreement is in force or the manner and time limits for termination of an indefinite-term agreement or a fixed-term agreement with a renewal clause;*
 - 6. the date of entry into force, if the agreement does not enter into force on the date that it is concluded;*
 - 7. the date on which the agreement was concluded;*
 - 8. the signature of the persons empowered to sign under article 14, or the statement to which this article refers.*

Non-compliance with any of these formalities may result in refusal to accept deposit thereof (art.18, para 1)(cf. below).

Once concluded, the collective agreement must be deposited with the Ministry of Employment and Labour, in accordance with article 18 of the Act, in the manner set out in the royal decree of 7 November 1969.

Agreements concluded within a joint body must be announced in a particular way, by the publication in the *Moniteur Belge* (official journal) of a notice stating the subject, date, duration, scope and place of deposit of the agreement (art.25 of the Act).

5. **Effects of a collective agreement:**

Apart from the case of the extension of the binding force of a collective agreement (cf. below), it will be noted that it binds employers' organizations that have concluded it, and workers and employers "close" to the signatories. These are mainly the persons envisaged in article 19 of the Act, which provides:

"The agreement shall bind:

1. the organizations which have concluded it and the employers that are members of such organizations or which have concluded the agreement, from the date of its entry into force;
2. the organizations and employers which accede to the agreement and employers members of such organizations, from the date of accession;
3. employers that become members of an organization bound by the agreement, from the date of joining;
4. all workers of an employer bound by the agreement".

These persons shall be bound imperatively by the collective agreement: any clause in an individual contract of employment contrary to the provisions of a collective agreement shall be deemed void (art.11 of the Act).

Also bound, to the extent that the agreement has been concluded within a joint body, the workers and employers covered by that joint body and included in the scope of the agreement. Such persons are bound only by the provisions concerning individual relationships between workers and employers and, in a supplementary manner, provided that the individual contract of employment does not contain a written clause contrary to the agreement.

Lastly, the agreement binds organizations and employers which, although they have not concluded it, choose to accede to it subsequently. This case is covered by article 17 of the Act, which states:

"Organizations and employers which have not concluded the agreement may accede to it at any time by consent of all the parties that concluded it, unless the agreement provides otherwise.

Accession shall be in writing, otherwise it is void".

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?**

The King may extend the binding force of collective agreements concluded within a joint body (art. 28 of the Act) and, thus, bind imperatively all employers and workers covered by the joint body, to the extent that they are included in the scope of the agreement (art. 31 of the Act).

- a. Is extension frequently or rarely used in practice?

Extension is a fairly widespread practice.

- b. **When extension is possible:**

- i. **What procedure has to be followed for an agreement to be extended to third parties?**

The King can only extend the force of the original agreement at the request of the joint body within which it was concluded or an organization represented in that body (art. 28 of the Act).

The text of the agreement must be published in the Moniteur Belge, annexed to the royal decree that makes it mandatory (art. 30, para. 1 of the Act).

The royal decree takes effect from the date of entry into force of the agreement of which it extends the mandatory force, but may not be retroactive more than one year from its publication (art. 32 of the Act).

The Act of 5 December 1968 also sets out the arrangements under which the royal decree may cease to have effect (arts. 33 and 34)

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

Whether on the basis of geographical or sectoral criteria, coverage is determined as a function, firstly, of the joint body within which the agreement has been concluded and, secondly, the scope of the agreement.

B. The parties to collective bargaining

7. **Who are the parties of collective agreements?**

On the workers' side, they are exclusively their representative organizations. As to the employers, the agreement may be concluded by one or more employers, or one or more of their representative organizations. The legal definition of workers' or employers' representative organizations concerns the following types of organization:

"1. Interprofessional organizations of workers and employers formed at national level and represented in the Central Economic Council and the National Labour Council; workers' organizations must, in addition, have at least 50,000 members;

2. professional organizations affiliated to or forming part of an interprofessional organization in 1 above;

3. employers' professional organizations which, in a given branch of activity, are declared as representative by the King, on the advice of the National Labour Council.

Also considered to be employers' representative organizations are national interprofessional and professional organizations accredited under the Middles Classes Organization Act of 6 March 1964, which are representative of heads of small crafts businesses, small and medium-sized traders, small industry and self-employed persons exercising a liberal profession or other intellectual profession" Act of 5 December 1968, art.3).

8. Workers' representation by a trade union:

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

Yes.

- i- how is the representativeness of a trade union for collective bargaining purposes is 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)?

This representativeness is determined in accordance with the above-mentioned provision of article 3 of the Act of 5 December 1968.

- 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?

Labour courts are not competent to hear this type of dispute. Any challenges relating to representativeness or appointment of persons to sit in the National Labour Council or the Central Economic Council will be brought before the Council of State which will decide by virtue of its general powers in respect of administrative acts.

Disputes in this area are insignificant.

b. Where there is trade union multiplicity:

- i- **How organized is the workers' representation for collective bargaining purposes?**

The situation of trade union multiplicity is clearly evident in Belgium where several organizations are regarded as representative (both on the workers' and the employers' side). However, it does not cause any particular problems. The appointment of representatives of representative organizations stems from an assessment of the "relative representativeness" of each.