

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

The Role of Collective Bargaining

Questionnaire

FRANCE

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

**National Reporter: Conseiller Bernard Boubli, Doyen de la 1^{ère} section,
Cour 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.

Preamble to the Constitution of 27 October 1946. Principle recognized as a constitutional right.

2. **Legislation**:

- i) Please, indicate if collective bargaining in your country is regulated by:
 - a) The Labour Code or a general labour law (e.g. the Workers' Charter in Spain)
 - b) A law on collective bargaining
 - c) A framework (central) agreement
- ii) 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)?
- iii) 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?

Regulation by the Labour Code (art L 131-1 and following).

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?

(1) All collective agreements with the status of collective contract or agreement within the meaning of articles L 131-1 and following of the Labour Code are exclusively between the employers or employers's organizations on the one hand, and workers' organizations on the other.

(2) Such agreements exist at national, regional, sector and enterprise level.

Is there any other type of collective agreements in your country? If so, which ones?

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

(1) Agreements between the employer and representative bodies (works council)

(2) Agreements not limited to labour relationships (pensions).

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 approval .

b. Registration?

c. Publication?

YES.

d. Other?

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

In principle, yes, if there is a written document

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?

The members of the signatory employers' unions

Workers in enterprises bound by the collective agreement signed with the employer or the employers' organization.

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.... NO.....

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

b. When extension is possible

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

Decision in the joint committee and extension by the Minister of Labour following an opinion by the National Commission for Collective Bargaining.

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

In practice, the country....

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?

Employer, group of employers, employers' organization (union or otherwise) on the one hand

Trade unions representing the workers on the other

8. **Workers' representation by a trade union:**

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

If so is: 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)?

Designation of representative federal organizations at national level

Establishment of representativeness in bargaining on behalf of others based on the number of workers, period during which dues are paid, independence and activity of the trade union.

Trade unions representative at national level are deemed to be representative at enterprise 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?

The ordinary law judge is competent.

It is an important issue. Where there is trade union multiplicity:

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

All representative organizations are qualified to engage in collective bargaining, sometimes all are involved.

- iv- 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?

No. The issue leads minority unions to proliferate litigation to attain representativeness.

- v- 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?

A non-signatory union may adhere to an agreement that has already been signed. It becomes party to the collective agreement

- b. Can a union represent non unionized workers for collective bargaining purposes? **YES**

- c. Can a collective agreement be applied to non union members? **YES**

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

Strike notice

- ii.
 - 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?

Execution of a writ in the employment tribunals
Civil action in ordinary law courts
Offence of impeding (entrave) (criminal judge)

- 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?

YES, obligation to honour the agreement.

9. **Work agreements concluded by a non union body:**

- a. For your country, please indicate whether in your country 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?

There is an enterprise committee, and delegates elected by the employees from lists submitted in the 1st round only by union representatives.

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

Apart from submitting candidates, trade unions may nominate a representative to the enterprise committee if they are representative.

- 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*)?

They can negotiate agreements which are not collective agreements within the meaning of the law, which can be unilaterally terminated by the employer.

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

YES

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

YES

- f. Do these agreements be enforced before a Labour Court?
If they can:

YES

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

The trade union
A worker

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

It can order enforcement of the writ
Order the employer to make compensation

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

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

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

Their distribution, according with their coverage:

- i. sectorial, industrial, and enterprise level agreements;
- ii. national, regional, provincial or local agreements;
- iii.. the percentage of the workforce that are covered by collective agreements
- iv. the percentage of enterprises that are covered by collective agreements

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

- i. Terms and conditions of employment? (e.g. wages, overtime, hours of work, job classification) **YES**
- ii. Provisions concerning the contract of employment: hiring, probation, discipline, fixed-term contracts, termination of employment, other? **YES**
- iii. Health and safety? **YES**
- iv. Training? **YES**
- v. Workers' welfare **YES**
- vi. Workers' rights in the enterprise: right of expression, data protection, others? **YES**
- vii. Trade union rights and facilities to be afforded to union stewards? **YES**
- viii. Settlement of dispute? **YES**

- ix. Peace obligation?
- x. Interpretation and administration of the agreement? **YES**
- xi. Procedures for denunciation and renewal of the agreement? **YES**
- xii. 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)?

Agreement with staff representatives on the specific subject (incentives, firm,...)
The rest collective bargaining.

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

Rules deriving from public order (organization and functioning of tribunal members, protected salaries. Rules more favourable than those under the law)

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

Minimum wages

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

15. By what means collective agreements achieved? (Bargaining or, if not successful, striking, or by going in other industrial action? Mediation? Arbitration?)

Negotiations and sometimes strike action. Mediation and arbitration procedures exist but are not always used.

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

- a) while on the negotiation of 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?

17. Can a labour court mediate in a collective dispute? **YES**

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?)

Interpretation as a written law

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

The wording is taken into account, and also the intention.

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

Allowed if there is an interpretation clause

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

YES,

if that is the result of the interpretation.

Equally, if the agreement conflicts with a public policy rule or the principle of more favourable

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

About 10 to 15 per cent of disputes

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

Probably, but an extremely unlikely hypothesis