

**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**

HUNGARY

**National Reporter: Judge Tünde Handó,
Labour Court of Budapest**

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.

Constitutional Act:

Article 4 Trade unions and other representative organizations shall safeguard and represent the interests of employees, members of co-operatives and entrepreneurs.

Article 70/B (3) All persons who work have the right to an income that corresponds to the amount and quality of work performed.(4) Everyone has the right to rest time, free time and regular paid vacation.

Article 70/C (1) Everyone has the right to establish or join organizations together with others in order to protect his economic or social interests.

2. **Legislation:**

- a. Please, indicate if collective bargaining in your country is regulated by:

- | | | |
|------|--|------------|
| i) | the Labour Code or a general labour law (e.g. the Workers' Charter in Spain) | Yes |
| ii) | a law on collective bargaining | No |
| iii) | a framework (central) agreement | No |

- b. 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)

- c. 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?

The labour court doesn't play a decisive role. The Labour Code (1992) regulates this area in detail. At the last ten years were only a few cases, which had some publicity, and influence to the practise.

3. Types of collective agreements:

a. Are there 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 LC rules the “collective agreement” (= enterprise level), the “extended collective agreement” (=sector, subsector level) and the “operative agreement” (=enterprise level, where the parties are the employer and works council). The operative agreement may conclude if there is no local trade union branch at an employer. The content, framework of these agreements are similar:

- a) rights and obligations originating from employment relationship, the method of exercising, and fulfilling and the procedural order of such relationship,*
- b) the relation between the parties to the collective bargaining*

Nowadays the provision about the operating agreement is overruled by Parliament (will be invalid from 1st of September). At the future to conclude the agreement will be an exclusive right for trade union.

b. Are there any other types of collective agreements in your country? Please specify.

Some enterprises - which belong to one owner - may conclude the same agreement with the trade union. The “multi-employer” collective agreement legally exists at the enterprise level.

The government shall discuss issue of national significance pertaining to labour relations and employment relationship with the national interest organization of employees and employers through the National Interest Council. The issue of the reconciliation are:

- Establish the provisions, in derogation from LC, the termination of employment due to economic reasons affecting large numbers of employees, in the interest of preserving jobs;*
- Establish the mandatory minimum wage and the provisions for the supervision of labour relations;*
- Submit recommendation to define the maximum duration of daily work time and to determine official holidays*

This is a forum for the national wage negotiations. The Minister of Labour shall promulgate the agreements concluded in the NIC in a legal regulation.

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 | No |
| b. | Registration? | No |
| c. | Publication? | Yes |
| d. | Other? | No |

For a collective agreement to be valid, is its Conclusion enough?	No
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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?

Only one collective bargaining agreement may be conclude with an employer. It shall also apply to the employees of the affected employer who are not members of the trade union concluding the collective bargaining agreement.

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**

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|----|---|--------------------------|
| a. | Is extension frequently or rarely used in practice? | Rarely (only two) |
| b. | When extension is possible: | |
| i) | what procedure has to be followed for an agreement to be extended to third parties? | |

The Minister of Labour may extend the scope of the collective bargaining agreement to the entire sector (or sub sector), if so requested by the parties, and following request of the opinion of the national employee and employer interest representations affected by such extension of scope, provided the organizations concluding the agreement qualify as representative for the sector (or sub sector) in question.

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

There are only two extended collective agreement: at the electric power industry and the baking industry.

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?

Enterprise level:

a) employer, employer interest representation – trade union, several trade union

b) employer – works council

Sector level (extended agreement):

***employer, employer interest representation – trade union, several trade union
+ the national representation organizations of above mentioned
parties(associations)
+ Minister of Labor***

The effect of a collective agreement, in the absence of any extension of scope, shall apply to employers who were a member of the employer interest representation organization at the time the collective agreement was concluded or subsequently joined the employer interest representation organization.

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

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

If so:

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

At the enterprise level the trade union is representative, if

a) its candidates received at least ten percent of the votes in the works council election,

b) its members are at least two-third of the employees of the employer in the same employment group (profession)

At sector level: The employer interest representation organization which – on basis of its membership, market position and number of employees – is the most significant in its field of activity, shall, in particular, be construed as representative.

The trade union that, by virtue of its membership and the support it receives from the employees, is the most significant in its field of activity, shall be particularly construed as representative.

- 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 LC regulated a special action for this issue. Disputes related to the right to conclude a collective agreement shall be decided by the court in nonlitigious proceedings, upon request by the organization concerned. Where there is trade union multiplicity, this is an important issue.

b. Where there is trade union multiplicity:

- i) how organized is the workers' representation for collective bargaining purposes?

The LC regulated the possible cases :

- a) ***If more than one trade union maintains a local branch at an employer, the collective agreement may be concluded by all the trade unions together, provided that the candidates of such trade unions have jointly received more than half the votes in the works council election.***
- b) ***If the conditions for having the trade unions jointly conclude a collective agreement are not fulfilled, the representative trade unions shall conclude the collective bargaining agreement together, provided the candidates of such trade unions have jointly received more than half votes in the works council election.***
- c) ***If the conditions for having the representative trade unions jointly conclude a collective agreement are not fulfilled, the trade union whose candidates jointly received more than sixty-five per cent of the votes in the works council election shall be entitled to conclude the collective agreement.***

The provisions of the b) case lays before the Constitutional Court. The Supreme Court interpreted this rule, as compulsory alliance between all representative trade unions and reversed the labour court decision. The overruled decision said, at least two representative trade unions – of the three or more representative trade unions – are enough to conclude the agreement, provided their candidates jointly received more than half votes in the works council. The judge suspended the trial, and asked the Constitutional Court to abolish the unconstitutional provision (Article 4.)

- ii) 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?

All trade unions represented at the employer may attend the negotiations for the conclusion of the collective agreement. The stronger trade union or employer try to exclude or separate the weaker trade union from this negotiations. The injured trade union may claim for its right at the court.

- iii) 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?

The LC doesn't regulate this question. The parties may regulate their relationship at the collective agreement. This is guidance for the court.

- c) Can a union represent non unionized workers for collective bargaining purposes? Yes
- d) Can a collective agreement be applied to non union members? Yes
- e) What procedural rights and obligations are granted to Trade Unions that have signed a collective agreement? For example
 - i) can they initiate litigation on the workers' behalf? **Yes, but this is limited**

When the employee suffered under breach of collective contract, he/she should sue the employer for damages etc. Trade unions may represent their members, if duly authorized, before the court. The trade union may initiate litigation in its own right, when the individual litigation isn't possible: the injured individual right is missing. On the other hand, if an employer has terminated the employment relationship of a trade union official by ordinary dismissal without the prior consent of the immediate superior trade union branch, the local trade union branch be entitled to lodge a demurrer.

Most cases in this area involved from the right of veto. The trade union shall be entitled to contest any unlawful action taken by the employer (or his failure to act) if such action directly affects the employees or the interest representation organizations of employees. The non-representative trade union shall also be entitled to the right of demurrer, if the employer's action (or failure to act) violates a legal provision.

- ii) can they initiate litigation on their own behalf? Yes
- iii) others

For the enforcement of employment-related claims, or for the enforcement of their claims ensured by the LC, the collective agreement or operative agreement, employees or trade unions and works councils may file for employment-related legal action according to the provisions of the LC. The employer has this right as well.

The LC orders some issue (right of veto etc.) for nonlitigious process (strict schedule, without hearing etc) and preliminary conciliation.

- 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?

The agreement isn't enforceable by law. The trade union may enforce it by strike.

- 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?

The Supervisor of Labour Relation Agency may impose fine for the employer. The labour court's injunction can be declarative (the controversial measure is unlawful) or compulsory for employer to do or not to do something.

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

- a. For your country, please indicate whether 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?

A works council shall be elected at all employers or at all of the employer's independent operational facilities with more than fifty employees. The number of works council's members (3-13) depends on the number of employees. The election and appointment are very sophisticated. The main rules are:

- ***All employees –except the manager – have right of vote,***
- ***Nominated employees shall have been employed for a period of at least six month,***
- ***The employer mustn't influence the election,***
- ***The election shall be secret and direct ballot,***
- ***The person receiving the most, or at least thirty per cent of the valid votes shall be construed as having been elected members of works council,***
- ***In the event of an invalid ballot, the election shall be repeated.***

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

The election is important for the trade unions, because their representativeness depends on their candidates' votes. The works council strengthens the power of trade union (this is the second battle-field), even if the scope of works council is diverse from the function of trade union.

- 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*)?

Works councils have the right of

- *codetermination with regard to appropriation of welfare funds specified in the collective agreement ,*
- *consultation of reorganization, transformation, privatisation, modernization, plan for the annual vacation schedule, rehabilitation of invalid employees etc.,*
- *notify about the fundamental issues affecting the employer's economic situation etc.*
- *conclude the operative agreement*

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

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

f. Can these agreements be enforced before a Labour Court? **Yes**
If they can:

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

Parties signed the agreement.

- ii) what measures can a labour court take to enforce these agreements?

The labour court may decelerate the unlawful, or oblige the defendant to do or not to do something.

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

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

Number of collective agreements shows the power or weakness of trade union. This is the reason, why the data aren't published permanently. The latest available data are from 1999.

Probably these haven't been changed frequently.

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

	<i>Enterprise level</i>	<i>number of collective agreements</i>	<i>number of employees</i>	<i>%</i>
<i>of all</i>	<i>Private sector</i>	<i>1303</i>		<i>743.259</i>
<i>39%</i>				
	<i>Public sector</i>	<i>2048</i>		<i>274.329</i>
<i>34%</i>				
		<i>3351</i>		<i>1.017.588</i>

There were 67 multi-employer collective agreements (within two sectorial agreement), which cover summary 340.531 employees. Possible is some overlapping between two types of collective agreement, so percentage of covered employees were approximately 42%.

- b. 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?

- | | | |
|----|--|------------|
| a. | Terms and conditions of employment? (e.g. wages, overtime, hours of work, job classification) | Yes |
| b. | Provisions concerning the contract of employment: hiring, probation, discipline, fixed-term contracts, termination of employment, other? | Yes |
| c. | Health and safety? | Yes |
| d. | Training? | Yes |
| e. | Workers' welfare | Yes |
| f. | Workers' rights in the enterprise: right of expression, data protection, other? | Yes |
| g. | Trade union rights and facilities to be afforded to union stewards? | Yes |
| h. | Settlement of disputes? | Yes |
| i. | Peace obligation? | Yes |
| j. | Interpretation and administration of the agreement? | Yes |
| k. | Procedures for denunciation and renewal of the agreement? | Yes |

Other?

Typically the provisions of LC are repeated at the collective agreement. In some area (transport, commercial etc.) the work time schedule, the liabilities for damages require special provisions. In this area the position of trade union and the interest of employer are stronger then elsewhere. In this fields may exist a real collective agreement.

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)?

The agreements may content all above subjects. LC doesn't regulate this issue in detail. The basic rule is prohibition of injury to compulsory legal regulation. When the parties may deviate from the provision of LC shall more favourable for employees. There are only some issue where the LC definitely allows the unfavourable deviation.

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

The LC regulates some issue

- ***Definitely prohibition of deviation (every employment contract shall written, every termination measures must be written, the employees mustn't renounce his/her salary preliminary etc)***
- ***Definitely permission of deviation, but the minimum or maximum standards are mostly regulated (discipline, fulltime employment, work schedule etc.)***

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

Government may establish the amount of minimum wages finally. There aren't distinct between the professional, regions etc. The collective agreement may regulate higher minimum wages. This provision is obliging to employer at the further individual employment contract.

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

15. By what means are collective agreements achieved? (Bargaining, or if not successful, striking, or by taking another industrial action? Mediation? Arbitration?)

The negotiation is binding to the employer if the trade union asked it. But the achieving a settlement is not compulsory. When the bargaining isn't successful the employees may initiate to strike. During the time of negotiations, the parties shall refrain from all action that may jeopardize an agreement. They can use mediation, arbitration, but these aren't compulsory. In fact the arbitration doesn't exist. The mediation is very rare. There is an official Service of Labour Mediation and Arbitration (33 cases -1999, 19 cases – 2000)

When the direct negotiation between the parties doesn't lead to settlement, the employees (arranged by trade union) may strike. In Hungary less than ten strikes occur per years. There aren't significant performances, except the railroad strikes.

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

- a. While negotiating a collective agreement?
The employer may su for declaration of unlawful strike.

If it can, how does it proceed (for example, by issuing an injunction)?

The court has to decide it non-litigation process within 3 days.

b. Where such action is in breach of the peace obligation?

No special action.

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

The non-litigation process is not favourable for the mediation. Theoretically the mediation is not impossible. At the litigation the aim of parties is the “triumph” and their strong emotion stop their common sense. Possible the judges haven’t sufficient skills to enforce the consiliation.

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?)

The LC content principles: non-discrimination, good-faith and fairness, the right and duties prescribed intended purpose etc. These are effected both collective and individual relationship. There are few collective disputes before the court, so the advisory opinions of the Supreme Court are very rare in this field. The judicial practise is uncertain, full of contradiction in some issue. The jurisprudence doesn’t deal with this field. The collection of judgment is missing.

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

There is no official ranking. The judge has a free.

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

The basic rule of the civil procedure is pleading of parties’ arguments.

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

Yes

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

We haven’t data about this matter. This is not frequently, because there aren’t many collective agreements.

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

Yes. This kind of judgment at the individual case, hasn't direct effect to the existing collective agreement. After the judgement the parties voluntary change the unsuitable term, provision at the collective agreement.