

**Tenth Meeting of European Labour Court Judges
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The Role of Collective Bargaining

Questionnaire

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

SLOVENIA

**National Reporter: Judge Janez Novak,
Supreme Court**

A. The Legal Framework of Collective Bargaining

1. Constitutional provisions

There are no specific provisions on collective bargaining in the Constitution of the Republic of Slovenia (hereinafter: URS). The right to bargaining in connection with collective agreements (hereinafter also KP) and to concluding collective agreements is embraced in the provisions of Article 42 URS (the right of assembly and association) which determines in the second paragraph that everyone has the right freely to associate with others.

2. Legislation

Collective bargaining, and above all concluding collective agreements, is governed by a number of regulations. It is regulated in the currently valid Basic Rights from Employment Act (hereinafter: ZTPDR) and Employment Act (hereinafter ZDR/90), and is also mentioned in numerous articles (27) of the new Employment Act (hereinafter ZDR), which will take effect on 1.1.2003. The Labour and Social Courts Act (Ur.l. RS, no. 19/94, 20/98, hereinafter: ZDSS), which took effect on 13 May 1994, is an important regulation.

It is also necessary to take into account international agreements ratified by the Republic of Slovenia and which regulate collective bargaining. These are above all the Convention on the protection of human rights and fundamental freedoms (Article 11 among other things regulates freedom of association and the founding of trade unions), the European Social Charter (Article 6 - right to collective bargaining) and the International Pact on civil and political rights (first paragraph of Article 22 - right of association, founding of trade unions).

The Labour Court does not have an essential role in this field since its operation is for the most part directed towards adjudicating labour disputes.

3. Types of collective agreements

The valid legislation, ZTPDR and ZDR/90, regulates three basic types of collective agreement:

- a. General collective agreements which apply throughout the country. i.e., KP for non-economic activities and KP for economic activities.
- b. Branch KP, of which there are currently 38, and they regulate the fields of individual economic branches from (in terms of alphabetical order in Slovene) the activities of banking to railway traffic.
- c. Enterprise KP, which are concluded with an individual employer.

ZDR will regulate: KP of general validity (corresponding to KP in point a. above), KP on the level of activities (point b) and KP of employers (point c.).

The legislation does not recognise other types of KP. It is necessary additionally to mention general acts of employers (e.g., rules that, e.g., regulate: organisation of work, employees' obligations, effective working time and time of justified absence from work and similar). Trade unions must be actively involved in the adoption of such acts of employers.

4. Conditions for the validity of collective agreements

The essential condition for the validity of a collective agreement is its promulgation. General and branch KP must be promulgated in the Official Gazette of the Republic of Slovenia. Enterprise KP must be promulgated in the manner which is determined for the promulgation of legal documents adopted by an employer. The parties may agree in particular the commencement of validity of a KP in such a way that they determine the date of validity.

The validity of a KP does not depend on confirmation by the government nor on registration.

For the validity of collective agreements, therefore, it is essential for them to be concluded (consensual will of the contract parties) and promulgated (predominantly in the Official Gazette of the Republic of Slovenia).

5. Effects of collective agreements

KP are concluded, generally speaking, by representatives of the employers' and workers' sides. In the first group belong, e.g., the Government of the Republic of Slovenia (which is a party of collective agreements in the area of non-economic activities), the Economic Chamber of Slovenia, Employers' Associations according to individual branches, individual employers with enterprise KP. The workers' side is represented by confederations - associations of trade unions, individual trade unions (e.g. Trade Union of Commercial Banks of Slovenia) or trade unions at employers. KP are binding on the aforementioned parties to a KP (the obligational parts of the KP), and through them also all workers who, e.g., are employed in a specific economic branch for the field of which the KP was concluded. Questions in connection with the extent of validity are only rarely disputed in practice.

6. **Extent of validity of collective agreements**

In the majority of introductory (obligational) parts of a KP, it is determined that the KP is binding for all workers employed by specific employers (e.g., from the economy or non-economy) or for workers whose employers belong in an individual economic branch (e.g., the power supply economy). It can also be determined that a KP applies for all employers who are members of specific employers' associations. The aforementioned means that KP also apply for workers who are not members of a trade union if their employer is a member of an employers' association which signed the KP. Employers are explicitly stated in the introductory part of a KP and they are for the most part signatories to it, thus parties of the collective agreement.

B. **THE PARTIES TO COLLECTIVE BARGAINING**

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

The answer to this question is given in point 5.

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

Trade unions have the decisive role in this sphere.

a.i) Representation of workers, members of trade unions, is determined in relation to the level of the agreement. In general collective agreements, representatives of the highest trade union organisations (e.g. confederations) represent the workers, on the level of branch agreements, the trade unions of these branches, and on the level of employers, the trade unions operating at this employer.

a.ii) The mediation of the Labour Court is not determined.

b. Only so-called representative trade unions are authorised to conclude collective agreements. The Representativeness of Trade Unions Act (Ur.l. RS, no. 13/93, hereinafter: ZRS) determines which trade unions are representative. The conditions that a trade union must fulfil in order for its representativeness to be established are determined in Article 6 to 11 ZRS. A decision on a trade union being deemed representative is issued by the minister of a specific economic sphere in which the trade union belongs. With employers, the employer establishes that a trade union is representative by decision. A labour dispute before the Labour Court is allowed against both decisions.

Individual trade unions may accede to an already valid KP. They thus take over all rights and obligations under the KP unless otherwise determined in the obligational part of the KP.

c.d. The answer to these questions is affirmative.

e. A trade union, a signatory of a KP, may on the basis of this agreement commence a proceeding on its own behalf or on behalf of its workers. According to valid legislation, a trade union at an employer may participate in a procedure of enforcing individual rights only at the request or with the consent of the worker concerned (second paragraph of Article 82 ZTPDR).

f. A signatory of a KP may demand from a party that is in breach of the agreement that it meets its obligations. A procedure is commenced with negotiations, and if these are unsuccessful, a reconciliation commission or arbitration may operate. Finally, a collective labour dispute before a labour court is possible, which is commenced on the initiative of a proposer.

g. A court may, on the proposal of a party, decide that the opposing party must meet obligations specified in the collective agreement. On the basis of Article 51 ZDSS, a labour court may ex officio, or on the proposal of a party, issue temporary injunctions which are used in an enforcement procedure. The purpose of them is to prevent (temporarily, not longer than to the finality of the decision) arbitrary behaviour or to avert irreparable damage.

9. Work agreements concluded by a non-union body

In principle it is necessary to answer that Slovene labour law does not recognise such agreements (work agreements).

In point a. the stated possibilities are not regulated in Slovene law.

In the part of the question relating to the procedure before labour courts (point f.) it is necessary to find that under ZDSS (Articles 44 to 49) a collective labour dispute may be commenced by a proposer (in most cases this is the representative organisation of employers or workers). ZDSS regulates 13 possible groups of participants (parties) to collective labour disputes.

Otherwise the situation applies as stated in the answer to point 8g.

C. THE ROLE AND (POLITICAL) IMPORTANCE OF COLLECTIVE AGREEMENTS

10. Data on the number of KP

Two general collective agreements (for economic and non-economic activities) and 38 branch collective agreements are currently valid.

The extent of validity of KP is very varied from activity to activity, amounting from 15% to 50% of workers or employers.

11. Subjects of collective agreements

Collective agreements regulate all the questions stated in points 11 a. to k., except those stated in points c. and e. This area belongs predominantly in the legal regulation of the area

of social security. The peace obligation (point i.) is not regulated in the Slovene law in such a way as in comparable labour law. The concept of peace means only that parties must in the first place resolve disputes in a peaceful way.

12. Competent persons to conclude collective agreements

It has been stated what kinds of KP in the Republic of Slovenia regulate legal relations between social partners. Slovene law does not recognise so-called work agreements.

13. Deciding according to the law or also according to KP or work agreements

With all decisions it is necessary to take into account the provisions of laws and KP which apply for the parties of a labour dispute.

14. Minimum or standard terms of employment under KPs

The principle applies that general KP regulate minimum rights under the headings pay and conditions of employment. Branch KP may determine more rights, enterprise KP even more, and individual employment contracts still more. The principle therefore applies of “expansion” of rights from general to specific KP and finally to employment contracts.

D. THE ROLE OF LABOUR COURTS IN THE COLLECTIVE BARGAINING PROCESS

15. Implementation of a KP

In the great majority of cases, parties of KP implement these without disputes. If there is a violation in the implementation of collective agreements, the parties are obliged first to negotiate. If the negotiations are unsuccessful, in the majority of cases the mediation of a third party (not the courts) is first determined, i.e., reconciliation commission and arbitration. Only in a case of a dispute not being resolved by this means is a strike allowed. Strikes in the Republic of Slovenia are relatively rare.

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

The answer to this question is affirmative. However, it must be added that there has not yet been a collective labour dispute in this area.

17. Mediation of a labour court in a collective labour dispute

Mediation, the purpose of which is the conclusion of a compromise in court, is determined in Articles 52 to 56 ZDSS. After a preliminary testing of an initiative (by which a collective labour dispute has been commenced) the president of the panel (who is a professional judge) calls a main hearing. The judge is obliged to attempt to bring about a compromise between the parties. A compromise may be reached throughout the procedure until a final

decision. If a compromise is concluded after the issue of a decision by the court of first instance, the court annuls the decision.

18. Can a labour court impose binding arbitration?

Such a possibility is not regulated in the Slovene legal arrangement.

E. INTERPRETATION OF COLLECTIVE AGREEMENTS BY THE LABOUR COURTS

19. Method of interpretation

Labour courts interpret KPs according to two principles.

Those parts of collective agreements which are binding only on parties to the collective agreement (called the obligatory parts of the KP) must be interpreted according to the principles of the law of obligations. That part of KP has the character of a contract (civil obligational law). The basis for interpretation of this part of the agreement is the Code of Obligations, or the previously valid Obligations Act.

The so-called normative part of collective agreements, thus the part which is the legal basis for concluding employment contracts, must be interpreted by the same principles as other (legal) standards.

20. Ranking of collective agreements

Such ranking is not known in the Slovene legal arrangement.

21. Asking parties for their interpretation of collective agreements

Labour courts explicitly do put such a question to the parties of collective labour disputes. Parties normally express their legal positions in their statements, thus also viewpoints on the manner of interpretation of individual provisions of a KP.

22. Possibilities of interpretation of collective agreements

Labour courts have such possibilities for interpretation on the basis of the general principles of interpretation of legal standards, thus also the principle of a narrow or wide interpretation.

23. Frequency of interpretation of KPs

When a collective agreement is the legal basis for reaching a decision in a labour dispute, the legal interpretation of a specific collective agreement is the essential legal basis for reaching a decision.

24. Rejection of an interpretation

A court may not reject the interpretation of any legal standard, thus also not collective agreements, because the interpretation of legal standards is one of its basic competencies and functions.