

**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**

VENEZUELA

**National Reporter Dr. Juan Rafael Perdomo.
Tribunal Supremo de Justicia,
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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.

Yes, the present Constitution, article 96, provides that all public and private sector workers have the right to voluntary collective bargaining and to conclude collective agreements, subject only to the requirements of the law. It then adds that collective agreements shall cover all workers employed at the time of signature and those entering employment after the agreement has been signed. This right is also established in articles 509 and 528 of the current Organic Labour Act.

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) YES.... NO.....

The Organic Labour Act governs collective bargaining in Venezuela, as stated above.

- b) A law on collective bargaining

YES.... NO....

It is governed by the current Organic Labour Act.

- c) A framework (central) agreement YES..... NO....

- 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)? YES.... NO....

No, in our country the Organic Labour Act establishes the right to collective bargaining and related regulations.

- 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?

Labour Courts decide legal aspects of collective bargaining when application is made to them. It may be that they decide on rights contained in collective bargaining, but it cannot be said that they have played a decisive role in framing the right to collective bargaining. However, they have an influence in interpreting law and regulations and in certain cases determine the rights contained in the text of the collective agreement.

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?

No, in Venezuela only "collective agreements" between trade unions and employers are regulated. "Collective agreements" established in the country have a different significance and scope than those under German law.

In Venezuela, the majority only of trade unions sign collective agreements, either at enterprise level or occupation and industry level. The latter may be national, regional or local in character, depending on the industrial activity or the subject matter of the agreement. The recent Organic Labour Act and its related Regulations speak for the first time of agreements. However, at enterprise level, there are agreements between workers and employers on specific matters applicable to the enterprise. There are also national agreements applying to the oil industry. In addition we have collective agreements for branches of activity, which may be agreed in a Labour Regulation Meeting (*Reunión Normativa Laboral*), specially agreed between one or more trade unions and one or more employers, for the purpose of establishing the conditions of work in the same branch of activity.

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

The term collective agreement is not in common use in our legal system. The term used in our system is the collective labour agreement, which can be extended automatically by a Labour Regulation Meeting to standardize conditions of work, with the authorization of the Ministry for that branch. Arbitration wards are binding on trade unions and employers' associations parties to the agreement. In addition to

collective agreements in Venezuela there are sporadic agreements whose legal nature is similar to a commercial contract and are designed to end collective disputes between trade unions and employers' organizations on specific conditions of work.

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? | YES |
| c. Publication? | YES |

The collective agreement will be deposited with the inspectorate of labour in order to be fully valid

- d. Other?.....**NO**.....

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

When the collective agreement duly signed by the parties is deposited and the Labour Inspector endorses it, the collective agreement is valid.

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?

They are binding on signatory trade unions, federations or confederations of trade unions, on the one hand, and employers' organizations or associations, on the other. Groups of workers are not permitted to negotiate a collective agreement independently. Under article 508 of the Organic Labour Act, the provisions of the collective agreement become binding provisions and an integral part of existing or future contracts of employment during the term of the collective agreement, including for workers who are not members of the trade union which signed the agreement. Under article 509 of the Act, the provisions of collective agreements shall apply to all workers in the enterprise, plant or establishment, including those who join subsequent to its signature.

5. 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**

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

It frequently applies to specific industrial branches: textiles, construction, wheat, shoes, motor cars, metal and furniture, or certain services (catering)

- b. When extension is possible:

A collective agreement signed at a Labour Regulation Meeting or through an arbitration award can be declared automatically extended by the National Executive to other employers and workers in the same branch of activity (article 553 of the Organic Labour Act), at the request of the regulation meeting itself or any of the parties to the agreement.

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

At the joint request of the parties forming the Labour Regulation Meeting, or one of the parties, the Government may declare the collective agreement extended to the branch of activity, after checking that the collective agreement is relevant to the majority of enterprises and the majority of workers in that branch. The extension is declared by decree passed in the Council of Ministers.

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

(a) It may be extended to a region, (b) a locality, and (c) to the whole 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?

The parties to a collective agreement are laid down by law. They may be (1) one or more trade unions, federations or confederations of workers and (2) one or more employers of employers organizations or associations.

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

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

Yes, it is, since the law provides that an employer is required to negotiate and engage in collective bargaining with the trade union that represents the absolute majority of workers employed by that employer. Occupational trade unions, in order to exercise the right of collective bargaining, must represent the absolute majority of the workers in that occupation. Under the law, executives and management staff are not taken into account in determining that majority. The same criterion applies to the Labour Regulation Meeting.

If so:

- 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)?

- (a) In the case of enterprise unions, representativeness is established as an absolute majority of the workers in the enterprise who are members of the trade union.
- (b) In the case of industry trade unions, the Labour Regulation Meeting procedure is used. The Ministry of Labour must check that employers' and workers' organizations represent, in the opinion of the Ministry, the majority of trade union members in the branch of activity concerned, at local, regional or national level and that they provide their services to employers. It is common practice to establish a workers' assembly, another method is election of colleges or lists. Trade union referendums are also used. The courts do not have powers to decide disputes concerning recognition or representativeness of a trade union to engage in collective bargaining, to determine representativeness.

Despite the above, the present Constitution, under article 292, created the Electoral Power, exercised by the National Electoral Council. Likewise, the Judicial Power consists of the Supreme Court of Justice, which sits in full session and constitutional, administrative policy, electoral, civil appeal, criminal appeal and social appeal chambers, whose functions and powers are determined by law. The Electoral Chamber of the Supreme Court of Justice is responsible for organizing elections of trade union, professional bodies and political organizations in the manner laid down by law. This body deals with cases of trade union representativeness, pursuant to article 293 of the Venezuelan Constitution. The Chamber has developed case law on trade union election issues.

In addition, the Administrative Policy Chamber of the Supreme Court of Justice decides administrative litigation, various issues involving public officials, provided that it consists of nullity of acts.

- 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?

Article 219 of the Labour Act Regulations provides that when it is necessary to ascertain the representativeness of trade unions with respect to collective bargaining or industrial disputes, the Labour Inspector shall organize a referendum to determine the most representative trade union. The majority is determined on the basis of the result of the election of workers who vote. The labour courts do not have the power to review this procedure. However, the Electoral Chamber of the Supreme Court of Justice deals with trade union elections and there have been some cases in this area.

Where there is trade union multiplicity:

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

There are federations and trade unions in the country which are organized to conduct collective bargaining nationally and for occupations or through enterprise unions. It should be noted that Venezuelan trade unionism is not in the main militant. Public employees are the strongest trade union sector is, but at the moment collective bargaining is weak. The trade union movement is divided which affects its ability to negotiate. In addition, unemployment and the informal economy seriously affect the level of unionization, which is estimated at 14 per cent, out of a base of five million, and thus collective bargaining.

- 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?

Minority unions have difficulty in claiming their rights. Enterprises avoid dialogue with minority unions. As the collective agreement applies to all workers, they can claim rights under the collective agreement. But the right to collective bargaining as such belongs to the majority unions.

- 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?

Joining in this specific case is subject to two requirements

- (1) When the candidate is one or more trade unions, it must attach the list of trade union members providing service to the employer or employers required to negotiate.**
- (2) When the candidate is one or more employers or employers' organizations, it must attach the list of workers concerned. The rights acquired by the organization are those established in the collective agreement, as they have the same rights and obligations. This procedure is conducted by the Ministry of Labour.**

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

NO

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

The worker is a beneficiary of the collective agreement that has been signed even if he does not belong to the union provided that he works for the employer or is in the same occupation or industry to which the collective agreement applies.

Except as expressly provided in the collective agreement, a particular activity performed by other workers in the enterprise is excluded.

- d. 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?
 - ii- Can they initiate litigation on their own behalf? **YES**
 - iii- Others..... **YES...**
- e. What procedures and recourses are available in your country for unions or employers to demand the enforcement of an agreement by the other party?

Under article 475 of the Organic Labour Act, a trade union may require the employer to take or refrain from certain measures concerning conditions of work, or conclude a collective agreement or implement one an existing agreement: The procedure consists of the following stages:

- (a) Submission of application**
- (b) Conciliation phase**
- (c) Dispute procedure**
- (d) Arbitration**
- (e) Strike**

- f. 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? **No**

In this case, when conciliation procedures have been exhausted, the trade union may submit an application to the labour inspector and summon the employer to resolve the problem. If the differences cannot be resolved during the daim process, the Trade union has the right to strike. The labour courts have no power to intervene, except in the case of "amparo" in respect of an administrative measure that injures collective rights of a constitutional nature. Equally, if the issue concerns representativeness, once the application has been referred to the National Electoral Council, the Electoral Chamber of the Supreme Court of Justice may hear the case.

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?

The existing rules are laid down in the Regulations under the Labour Act, in collective agreements which provide for the election of workers representatives to the enterprise or other institutions. They may be elected directly by the workers in general assembly. It may be agreed in the collective agreement to appoint a representative committee of delegates for perform certain functions. The Regulations provide for trade union referendums to resolve problems such as those indicated in the question.

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

A Committee expresses the will of the workers in a given area, activity or service. But it is a body which belongs to the trade union, provided for in the collective agreement, and without autonomous decision-making powers. It may also be agreed to appoint workers' committees or a tripartite board which acts as a tribunal. Apart from this latter situation, intermediate trade unions do not have the power to deal with matters of importance.

- 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*)?

The powers of enterprise committees are laid down in the statutes of the organization. Secondly, the collective agreement determines the frame work within which the workers' committee can act, which never extends beyond trade union lines. In addition, there are industrial health and safety committees, whose functions involve monitoring conditions of health at work and are required by law. Enterprise committees may discuss matters specific to their workplace, but any agreement with the enterprise must be authorized by the trade union. In other words, they are not autonomous and in no circumstances are they empowered to conclude collective agreements.

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

In Venezuela there are collective agreements at enterprise, industry or occupational level. That is the rule, although highly specialized agreements may be established, specifically in technical areas. At present collective bargaining activity is depressed.

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

In some business sectors there are conciliation procedures. Sometimes there are tripartite committees to decide on conditions of work or dismissals of workers. In the public sector, conciliation boards are used to resolve various issues: dismissals, unpaid wages.

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

As indicated above, relations between the enterprise and the workers are regulated by the written provisions of collective agreements. If there is a dispute concerning the application and interpretation of the provision, especially the legal aspect, the parties (trade unions, enterprises) may make application to the court and seek the correct interpretation of the provision, or have it declared null and void. The decision is final. Issues of an economic nature may also be dealt with through legal channels.

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

The Trade Union or Federation can bring litigation before the Court, since they are the representatives of the workers or unions respectively. Likewise, workers may take such legal action as they see fit, including without trade union assistance.

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

The decision handed down has clarifying or constitutive effects, since it settles legal matters, except where a trade union seeks payment of debts. In that situation, the decision which declares the existence of a debt to the trade union (dues, interest, etc.) may be enforced if it becomes final against the employer. In the case of violations of the constitution the procedure of "amparo" may be used, whereby the decision remedies the violation of the constitution and is enforced against the employer. The protections allowed under the Civil Procedures Code may also be used to enforce the decision.

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;

According to Ministry of Labour statistics, the following agreements were signed between 1 January 1999 and 31 December 2001:

(a) In 1999, 418 collective agreements were signed in the entire country.

(b) In 2000, 630 agreements were signed.

(c) In 2001, 658, figures which are just over half of the number of agreements signed for 1980.

As to collective agreements signed in a Labour Regulation Meeting, there has been no increase worth mentioning.

- 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 agreement

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?
- iii. Health and safety? YES
- iv. Training? YES
- v. Workers' welfare YES
- vi. Workers' rights in the enterprise: right of expression, data protection, other? YES
- vii. Trade union rights and facilities to be afforded to union stewards? YES
- viii. Settlement of disputes? YES
- ix. Peace obligation? YES
- 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)?

The collective agreements in force in Venezuela normally include the points indicated in question 11 from (i) to (xii) and sometimes others not mentioned. There is no other kind of collective agreement mentioned by the question. Collective agreements must be signed as laid down by the law.

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

The law governs all aspects of collective agreements. In general, no collective agreement may depart from or provide less than the law, since its benefits are the minimum that may be arrived at through collective bargaining. Collective agreements may improve on the law. Collective bargaining has yielded the best results.

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

Collective agreements normally improve on the legal minimum conditions, wages, hours of work, health and safety conditions.

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?)

Direct negotiation is the means used to resolve specific issues in collective agreements. Conciliation is used as the preferred method of settling collective disputes. This means negotiating on all matters contained in the claim. The claim process is then the prelude to a strike. Resort can be made to arbitration to solve the difficulties. In the private sector, strikes are not at all common, but in the public sector lightning stoppages or strikes are frequently used.

16. Can a labour court stop a strike or other form of industrial action: **NO**
a) while on the negotiation of a collective agreement? **NO**

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

This mechanism is not used in Venezuela. The administrative path is always used, or the parties act independently.

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

Social peace must not be breached. Some strikes in education and health affect citizen's rights. But there is no penalty, other than dismissal or termination, suspension or non payment of wages.

The use of strikes in the public sector is to force the Government to pay amounts due or fulfil the agreement. In the view of the workers, the idea is that the threat to the Government will make it pay or perform. That is why frequent use has been made of this mechanism because it is not necessary to go to the labour court. There is no resort to any institution.

17. Can a labour court mediate in a collective dispute? **NO**

18. Can a labour court impose binding arbitration? **NO**

c. 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?)

No. Judicial interpretation is the rule. In some contracts, as in the case of the oil or electricity industries, there are some rules of interpretation of agreements, but the law always has the last word. The minutes of meetings are used to resolve uncertainties in the event of breaches of their terms.

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

No. In general the rules of interpretation of contracts and laws are followed, taking into account the wording of the clause, as well as the general meaning and purpose of the contract. However, we are always guided by the written text.

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

This kind of interpretation is not used in our legal system. Interpretation is always in accordance with the law and our courts are not empowered with such a task.

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

No. It is a matter solely for the parties and is governed by the terms of the collective agreement.

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

Very infrequently. This is evidenced by the lack of case law in the labour courts during the 66 years since the Labour Act came into force. Approximately one to three cases a month, according to the statistical review for 2000 in Ramírez and Garay's Jurisprudence.

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

A trade union may seek before a court a simple declaration defining the scope of the term in the clause concerned which is unclear or ambiguous and impairs the effectiveness of the right.