

Ninth Meeting of European Labour Court Judges

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FINLAND

THE ROLE OF LABOUR COURT JUDGES IN THE IMPLEMENTATION OF SOCIAL POLICIES

Questionnaire

**General Reporter: Judge Stephen Adler, President
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1 Labour Court Judges and Social Policy

a) In what areas do judgments of your or other courts in your country pertain to social policy by either implementing or creating policies?

Possible areas:	Yes	No
- freedom of association	☒	☐
- collective bargaining	☒	☐
- strikes	☒	☐
- prevention of collective conflicts	☒	☐
- equality at the work place	☒	☐
- the definition of "employee"	☒	☐
- the definition of who is the "employer" of people performing certain types of work	☒	☐
- the application of labour law to irregular, disguised, or ambiguous working relationships	☒	☐
- education or occupational training	☒	☐
- freedom of occupation and non-competition clauses	☒	☐
- work safety	☒	☐
- protection of vulnerable groups (such as unskilled people, foreign workers, disabled people, etc).	☒	☐
- other (please describe)		

Labour law, and not social policy, is the term used in Finland to denote the areas of legal regulation mentioned above. Seen from this perspective, job protection is another important

field of regulation. This is reflected in dismissal cases being frequently brought before Finnish courts.

b) What has been, in general, the contribution of the labour courts in your country to the development of social policy? (Please see under (c) before answering this.)

The competence of the Finnish Labour Court is confined to the sphere of collective labour law. The Court handles cases dealing with the interpretation of collective agreements and breaches of duties ensuing from such agreements, including violations of the labour peace obligation. Collective bargaining is a central part of the Finnish labour market mechanism which is characterized by strong organizations and high union density. Accordingly, the Labour Court plays an important role as a forum where disputes arising out of this mechanism are solved. The Court is the last instance in matters belonging to its jurisdiction.

Claims based on statutory labour law are heard and tried within the system of regular courts. Matters pertaining to social security, such as pensions and unemployment and sickness benefits, are handled in administrative bodies and courts.

c) Relating specifically to freedom of association, what has been the labour courts' role in developing and/or implementing your country's social policy?

Freedom of association is guaranteed by the Constitution, the Employment Contracts Act, and also the Criminal Code. In addition, most collective agreements include clauses on freedom of association. On this basis the Labour Court is drawn to implement also aspects of the said freedom. This mainly takes place in the context of two types of cases. First, there are cases where a strike or a lock-out is instituted in breach of a clause on freedom of association. This is evident if the purpose of the action is to force non-unionized workers to join the union (see Judgements No. 2000:49 and 50 of the Court). Second, in collective dismissal cases it is not unusual that the plaintiff argues that trade union activity has in fact been the ground for the selection of the employee who has been made redundant. Such an argument is then considered, though seldom found valid by the Court.

d) Describe briefly some labour court judgments which have implemented or determined social policy; if possible, relating to freedom of association, including the protection or encouragement of trade unions and collective agreements.

Some judgements have been described above. The whole activity of the Labour Court can be said to contribute to the smooth and proper functioning of the rules of collective labour law. Individual cases may seem to deal with minor issues, as in Judgement No. 2000:52 which can be briefly presented here as an example of the everyday work of the Court. The case dealt with the interpretation of the collective agreement concluded for land and water construction. In the judgement it was decided that under the agreement workers were not entitled to daily allowance and accommodation provided by the employer when they stayed over the weekend in the locality of the construction site.

The nature of the cases handled by the Court can also be described by giving data on what has been at issue in some major groups of cases. Such groups relate to industrial action, agreement clauses on remuneration, termination of employment relationship, rights of employee representatives, and miscellaneous issues.

- e) Have there been instances in which labour court decisions relating to social policy have been incorporated into statutes, changed by statutes, or adopted by the general courts?**

This kind of influence is not common as the Labour Court is mainly occupied with texts of collective agreements. However, it often happens that rules of statutory labour law are incorporated into collective agreements which implies that the Labour Court and the regular courts in fact apply texts with the same contents. This is the case relating to individual dismissal, regulated both in the Employment Contracts Act and in collective agreements. Since precedents published by the Supreme Court are scarce in this field, the jurisprudence of the Labour Court has proved to be valuable for the regular courts which also deal with these matters.

- f) Is there a connection between social policy and social justice in labour court judgments? Please explain.**

For reasons explained above under e) public social policy has only an indirect influence on the work of the Labour Court. The Court naturally has to observe mandatory rules of law in all its activity, and so the Court also takes into account the general principles of law, such as equality and other human rights, as well as the rules of EC law.

In its application of collective agreements the Court seeks to find socially justifiable solutions. This is contributed by the tripartite composition of the Court. For more details on this, see below.

2 Labour Court Judges and Access to Justice

- a) What has been the contribution of the labour courts in your country to effectively ensuring the appearance before the judge on truly equal terms for all parties involved? To what extent is this contribution related to aspects such as cost (for instance, exemption from certain court costs for the financially weaker party); the possibility for workers to receive professional assistance by a lawyer or to be represented by other experts (for free?); the possibility for trade unions to appear in court (on their own behalf, as representatives of their members, and under what conditions if any); and the burden of proof?**

This is not a major problem in Finland because the parties which appear before the Labour Court are the signatory parties to the collective agreement in question (usually federations), even if the case is about the rights of an individual member. Only if the party decides not to initiate proceedings can the member himself bring his case to the Court. In general the system guarantees that lack of necessary legal expertise or other resources will not become an obstacle for getting a fair trial. The trial costs ordered by the Labour Court are traditionally quite moderate.

- b) In what manner and to what extent is the labour court able to reconcile careful analysis leading to well-founded and impartial rulings, with the need, strongly felt in the area of labour law and social protection, for a rapid delivery of judgements? (This may include a discussion of issues such as the use of new technologies; “out-sourcing” of certain tasks (formerly) performed by judges; shortening of deadlines; oral procedures.)**

The duration of judicial proceedings in the Labour Court was in 2000 four and a half months per case on an average. If the dispute concerns the interpretation of a collective agreement, the proceedings are preceded by a grievance procedure, comprising normally negotiations conducted locally and at the federation level. This may add another few months to the total duration of the procedure, but has the effect that cases are better prepared before they reach the Court. Considering that the Court is the last instance, the proceedings can be regarded as reasonably prompt altogether. On the other hand, the time spent per case is felt to be long enough for preparing a well-founded ruling.

In urgent situations the Court is able to handle a case and deliver the judgement within a couple of days. This may happen when the case concerns an intended or ongoing industrial action. These cases are usually not legally complicated.

c) Do you consider, in this regard, that the requirement of an efficient labour court raises the question for the judge to also develop personal managerial qualities?

Much of the efficiency achieved by now is due to established routines and the informal nature of the proceedings. One can of course always strive for the better, although managerial qualities and efficient direction of the proceedings are perhaps not the same thing.

It is another matter that leading the Court as an administrative unit requires managerial qualities different from those of a competent judge. As these skills are not part of the traditional lawyers' education, there remains much to be done on the judge's own initiative. A judge can develop both sides of his professional qualities by attending courses arranged by the Ministry of Justice.

3 Labour Court Status and Social Policies

a) Is the role of your court, or other courts in your country, limited to the implementation of social policy set in statutes? Or do your court's judgments include judge-made law regarding social policy?

It is reminded that the competence of the Labour Court presupposes an existing collective agreement. If a particular issue is not regulated in a collective agreement, the Court will not fill the gap and draft an agreement on behalf of the parties. The same could be expressed by saying that the Court only deals with disputes of law, not of interest.

As regards the Finnish administration of justice in the field of labour law in general, the basis is in fairly comprehensive statutory rules complemented by collective agreements. This does not leave very much margin, or need, for judge-made law in the field of labour law.

b) In your opinion, should labour courts adopt a role of "judicial activism", especially relating to judge-made social policy?

No. See response given above.

4 The Judge's Personal Condition and Social Policy

- a) **What is the role of individual judges' personal values, philosophy and outlook on life in their judgments? What is their role (personal influence) in deciding social policy issues?**

It is obvious that the judge's values have an impact especially in deciding issues of labour law which are often loaded with contravening interests. In the Labour Court, however, the impact of an individual judge is considerably diluted by the composition of the Court. A case is decided by the president (or the vice-president in his panel) acting as chairman, together with another neutral member and four members representing the two sides of industry. The chairman, who is a full-time judge, has in practice the biggest responsibility as the proposal for the judgement is prepared under his leadership. Yet the decision is reached after negotiations in which consensus is seriously sought.

- b) **How do judges learn about social problems, social issues at the workplace and social values? In other words, how are judges trained to deal with social policy?**

The professional judges of the Labour Court are traditionally appointed from among persons with a background as a labour law specialist in one way or another, often academic. Work in the Court itself provides the judge with a good touch with social issues. Constant co-operation with the members of the employee and employer side is very useful in this respect. The same can be said of the court sessions which are oral and involve hearing witnesses from workplaces, trade unions and so on.

- c) **Is this adequate in your view, and how should they be trained?**

The situation is fairly good in general. However, additional training in other than purely legal aspects of labour relations could be useful.

5 Lay Judges, Professional Judges and Social Policy

In case your labour courts have professional and lay judges:

- a) **What is the role of lay judges (public representatives) in implementing and making social policy and deciding issues relating to social policy?**

Reference has already been made to the composition of the Labour Court. The five lay judges working together with the chairman have an important role in the decision-making. Both the neutral member and the employers' and employees' members shall be conversant with labour matters. High officials of the main organizations of employers and employees, often lawyers, serve on the latter posts. Although the lay members have their full-time jobs elsewhere, in the Court they work under the responsibility of a judge.

- b) **What is the lay judges' contribution to the judgement itself, if any? (Would they be able to overrule the professional judge, for example?)**

The lay judges' experience, both legal and practical, is a valuable basis for judgements of the Court. All six members of the panel have an equal vote. This means that the lay members can in fact overrule the professional judge. However, about four-fifths of the judgements of

the Labour Court are unanimous. In case of an even vote, the opinion supported by the chairman prevails. Thus it seldom happens that the chairman is overruled.

c) Are the perspectives and ideas of lay judges on social policy different than those of the professional judges?

Since most of the lay judges are lawyers themselves, their general line of thinking and argumentation does not essentially differ from that of the professional judge. On the other hand, it is evident that a lay judge tends to emphasize arguments which are in favour of the side of industry that he or she represents. In this respect the lay judges are perhaps more consequential in their behaviour than the professional judge whose idea of a just solution does not so much depend on whether it is the worker party or the employer party that wins the case. But it may also happen that a lay judge representing, say, the employee side remains alone with his dissenting opinion while his fellow member votes with the majority. The lay members representing employers or employees often seem to have more interest in the result of the case than in the justification of the judgement. The justification is important to the extent that it does not contain statements which might have too far-reaching implications in view of future cases.

d) Are there any patterns in the way lay judges decide on matters relating to social policy? For example, do lay judges representative of labour usually vote to implement social rights while lay judges representative of management vote to oppose them?

See the answer given above. It must be stressed, however, that most cases are decided unanimously upon thorough discussions and, if necessary, repeated conferences held to formulate the judgement.