

**XXth Meeting of European Labour Court Judges  
10-11 September 2012**

Danish Labour Court, Sankt Annæ Plads 5,  
1250 Copenhagen, Denmark

**GENERAL AND NATIONAL REPORTS**

*Topic 1*

***Competing employee organisations, competing collective agreements***

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**GENERAL REPORT**

Reporter: Judge Niels Waage, Justice, Municipal Court, Denmark

***Introduction***

This report is to serve as a basis for the discussions at the XXth Meeting of European Labour Court Judges 10-11 September 2012 in Copenhagen. The report is based on responds to a questionnaire which I have elaborated in order to get inspiration to the discussions of the subject which was chosen by the organizing comity on proposal of Mr. Stein Evju at the meeting in September 2001 in Seville. Question 4 ("an employer leave an employers' organization?" etc.) was added to my questionnaire by the organizing comity.

It goes without saying that the questionnaire was inspired from Danish cases and circumstances. Therefore some of questions may seem rather irrelevant to some other countries.. In the report I have tried to place the single responds side by side in order to make a comparison between the countries possible. It has not always been easy, because competition between employee organisations in the

different countries seem to vary very much, and the answers to the questionnaire in many cases have not just been “yes” or “no”. My interpretation of the answers therefore has implied a simplification, and without any doubts also some inaccuracies, if not misunderstandings. But hopefully those misunderstandings and inaccuracies will inspire to rectifications and good discussions at the Copenhagen meeting.

The questionnaire starts by asking for how employees’ representation is organised in the various countries. The answers to that question seem to be very illustrative and useful (also in other contexts than the subject of the report). Therefore I have reproduced them all in their full length in exhibit 1 to this report.

Responses have been received from Belgium, Denmark, Finland, France, Germany, Ireland, Israel, Italy, Slovenia, Spain, Sweden and Venezuela.

## **Resume of responses to the questionnaire:**

### **1. Competing employee organisations**

#### ***The organisation of employees’ representation, main trade unions***

*Please give a brief description of how employees’ representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?*

See exhibit 1.

#### ***Competition between employee organisations***

*1.2. Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers’ representatives and a trade union.*

Belgium: A certain competition occurs, specifically between employee organisations that do not belong to the same main union

Denmark: Competition happens quite often

Finland: May happen but rare.

France: Competition is, in principle, not legal. If it occurs, a civil judge will solve the dispute, e. g. by applying the principle of prior tempore

Germany: hardly any real competition between main unions. In principle, competition between trade unions in the biggest main union are ruled out, Due to industrial change, however, competition between unions has increased. Competition is most likely between employee organisations that do not belong to the same main union, elected workers’ representatives work on a different level from the unions. Therefore competition between both is not possible.

Ireland: Competition may occur, but will be solved, as the only main union in the country has effective procedures in place to resolve such difficulties.

Israel: Competition is in principle legal, but controlled by the Commissioner of Labor Relations, and by judgments of the National Labour Court. The phenomenon of competition between two main trade

unions of workers or between two employee organizations which do not belong to any main union, or only one of them belongs to a main union in the same workplace including in initial worker's organization, is innovative and developing in the recent years. Usually the competition is between the main union Histadrut and other newly formed smaller unions, in the workplace. Negotiations on collective agreements for the workers are usually done by representatives of the central Histadrut body, which is elected at the national level, together with representatives of the plant workers committee, the latter being elected at the plant level. As long as the Histadrut is engaged in active negotiations towards signing a collective agreement, a newly sprung competing union won't be recognized as the representative of the workers. Officially, only the representatives of the central Histadrut body are authorized to sign the collective agreement. However, in practice the plant workers' committee representatives also sign the collective agreement, thus indicating commitment of the plant workforce to fulfill the agreement.

Italy: Competition may occur between two main unions or between employee organisations that do not belong to the same professional union, but not between organisations that belong to the same main union or between elected workers' representatives and a trade union.

Slovenia: Competition occurs especially between main unions and between employee organisations that do not belong to the same main union or that do not belong to any main union. No competition between workers' representatives and a trade union to conclude collective agreements. .

Spain: Normally no competition between main unions, no competition between employee organisations that belong to the same main organisation, competition between organisations that do not belong to the same main union yes, but not specially frequent, between trade unions and workers representatives: Yes, but workers' majority is given preference.

Sweden: May happen but rare:

Venezuela: No competition.

*1.3. Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?*

No: Belgium, France, Israel, Italy, Spain, Venezuela

Yes:

Denmark,

Finland: Yes, but it involves the employer, too

Germany. (The unions affiliated to the biggest main union coordinate their collective-bargaining competence to avoid pertaining conflicts)

Ireland. (Many of these agreements are of long standing and they regulate the industries, or occupations, or in some cases the grades of workers that a particular)

Slovenia

Sweden (Agreements of this kind are sometimes made by two trade unions. It seems that these agreements are not publicized.)

### ***Rules for resolving demarcation disputes***

*1.4. Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.*

Yes:

Finland (a special voluntary conciliation body and procedure for resolving demarcation problems has been in place for some years),

Denmark: (E. g. in the regulations of the LO (“Danish Confederation of Trade Unions”) and in the rules of procedure of the comity of demarcations of the confederation).

Germany: (The biggest main union sets rules for arbitration proceedings in their rules of association. Trade unions must first try to resolve the conflict on their own. If they do not succeed, a dispute settlement procedure will be invoked).

Ireland. (Generally the rules of main union prescribe that where a union (or a group of unions) have established negotiating rights in an employment or sector) no other union may seek to organise or represent workers within that employment or sector without the consent of the Union or unions having negotiating rights.)

Israel (An organization representing at least a third of workers in the workplace, is in status of a representative employees' union in the workplace. In case of dispute between two unions, the labour court will examine the number of members in each organization. The employee organization which is recognized as the representative union in the workplace is credited by the presumption of representation towards the employer and the competing organizations. The presumption of representation grants the representative union the authority to represent all the employees in the workplace; to negotiate in collective bargaining, and sign collective agreements with the employer. Accordingly, the burden of proof is on the competitive union claiming to be the representative organization in the workplace.)

Slovenia (The Statute of the largest Federation of Trade Unions provides rules for settlement of competence disputes between members of the Federation: mediation and arbitration)

No: Belgium, France, Italy, Spain, Sweden, Venezuela (anti-competitive agreements (demarcation agreements) are not allowed in Venezuela)

*1.5. Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?*

Yes:

Belgium (The employee organisations that are considered to be legally representative, enjoy a lot of privileges. Even to such an extent that the creation of new unions is discouraged. This is a conscious choice of the Belgian legislator. The goal is to ascertain certain stability in the collective labour relations)

Denmark (Only 4 main organizations are entitled to recommend candidates as judges in the labour court representing employees (a recommendation which is always followed by the minister of occupation, who appoints judges of the Labour court).

Israel (The Histadrut represents the largest number of employees in the State. Accordingly and due to Collective Agreements Law, The Minister of Law and the Minister of Labour consult with the Histadrut regarding issues of legislation, such as: Extension Order of the scope of application of any provision of a general collective agreement).

Italy (For the public sector, statute law limits bargaining at national level to the employees organisations that represent no less than a certain percentage of the workers in the area. The public authority is represented by a public institute which can subscribe the agreement only if a given percentage of the participating unions adhere to the bargain. So exist only one agreement for a single area of the public sector).

Slovenia (Representative Trade Unions e. g. conclude collective agreements of general validity, and participate in the bodies that decide on matters of economic and social security

Spain (The law gives a special status to the “representative unions” and, above all, to the “most representative unions”; e. g. the right of negotiating generally applicable collective agreement and the right to be represented on the appropriate public bodies, and the access to special financial and material facilities).

Sweden (Among trade unions, only some of the main organizations have a legal right to nominate members of the Labour Court. The appointment is decided by the government. Consequently, minority organizations of different kinds have no rights in this respect).

No: Finland, France, Germany, Ireland, Venezuela

*1.6. Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?*

Yes: Denmark (if such an employee organisation is party in a Labor court dispute, it has the right to have the case dealt with without the normal participation of judges representing the employee and employer side (e. g. the professional judge of the court sits alone).

No, Belgium, Israel, Italy, Slovenia, Spain, Sweden

Not relevant (because of “No” to question 1.5): France, Finland, Germany, Ireland, and Venezuela

## **2. The conclusion of competing collective agreements**

*2.1. Are employers bound by demarcation agreements between two employee organisations? (See question 1.2) when entering into a collective agreement?*

Not relevant (because no demarcation agreements exist): Belgium, France, Italy, Spain, and Venezuela

Yes: Finland (the employer side is normally party to such agreements and consequently bound by them),

Ireland (But only under the voluntary code set down by the main union)

No: Denmark, Germany, Ireland, Israel, Slovenia, Sweden

*2.2. Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?*

Yes:

Belgium,

Denmark,

Finland (but agreement 2 cannot replace agreement 1 until after the term of the first agreement has elapsed).

Germany (but the existence of multiple collective bargaining agreements may result in possibly competing bargaining agreements), Ireland (The whole area of collective bargaining and the conclusion of collective agreements is not regulated by law in Ireland. In general the conduct of industrial relations and the conclusion of collective agreements are governed by voluntary arrangements).

Italy,

Slovenia,

Sweden (the two agreements may exist together so that provisions in the second agreement concerning solely the relation between the employer and the union – rules on negotiation etc. – are to be fully and completely applied, unless the employer cannot apply these provisions without violating the older agreement. As to provisions directly concerning the relation between employer and employees, the older agreement is to be applied in situations where the two agreements are incompatible. This is normally the case as to remuneration to individual workers)

No:

France,

Israel (An employer who is covered by collective agreements with representative employee organisations, cannot enter into another agreement with another employee organization that wholly or partly covered by the previous agreement. More so, a change in the representation does not affect the collective agreement. The employer will be able to enter into another collective agreement only upon recognition of another employees' organization, and after negotiation when a change of circumstances has occurred; or if the workers' union has splitted and the other employee organization is recognized as the representative organization in the new bargaining unit).

Spain (for the duration of the collective agreement (1), in application of the principle of non-concurrence),

Venezuela

*2.3. Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?*

Yes: All countries

*If the answer to question 2.3 is yes:*

*2.4. Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?*

Not relevant: France

Yes:

Denmark,

Israel (Only if a change in circumstances has occurred in the collective labor relations, and the representative union is not committed to industrial peace clause in previous collective agreement, and if the employee organization (A1) has been recognized as the representative union, this organization may use industrial action to force the employer to enter into a new collective agreement.

Spain,

Sweden ( If the union's purpose is to replace the first agreement with legal effect not only for the union's own members but also for members of the union that has signed the older agreement, the action is deemed to be an attack on the first agreement and therefore a violation of the legal peace obligation)

Venezuela (as the conditions of the first collective convention become mandatory clauses and part of the individual work contracts signed while valid in the field of the convention, even for those employees who are not part of the union that subscribed the convention)

No: Belgium,

Finland (But such action would be more or less futile, because a new agreement could not legally replace an earlier agreement, binding upon the employer. (the so called time priority rule)

Germany,

Ireland,

Italy,

Slovenia

*2.5. Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.*

Not relevant: France (cfr. answer 1.2), Slovenia (It is a question of internal organization and Statute of the Trade Union Federation or Confederation who is a signatory (party) of the collective agreement), Spain (the case of competing employee organisations members of the same main trade union is not realistic in the Spanish collective bargaining system).

Yes:

Denmark,

Germany (but it depends on whether or not the rules of association of the main union include arbitration procedures for settling disputes over areas of interest between member unions)

No:

Belgium,

Finland,

Ireland (If a dispute of this nature were to arise in Ireland it would be resolved within the rules of the main union without any form of industrial action), Italy (It makes no difference if the competing employee organisations are members of the same main organisation; however, the conflict should be managed by the main employee organisation, which means that the two unions cannot bargain for different agreements and keep belonging to the same main organisation.)

Israel

Sweden,

Venezuela

*2.6. An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).*

*2.6.1. Is the employer automatically covered by O1 upon membership of the employer organisation?*

Yes:

Belgium,

Denmark,

Finland,

France,

Germany (It is, however, possible to become a member of an employer organisation without full commitment to the collective bargaining agreement O1),

Israel,

Italy,

Sweden

No:

Slovenia,

Venezuela (but the effects of a collective agreement may under certain circumstances be extended to the entire field of work.)

Not relevant:

Ireland (Collective agreements in Ireland are either in respect of a particular employment or in respect to a sector. Were sector agreements exist there is provision in Irish law to register them with the Labour Court. The effect of registration is that the agreements apply to all employers in the sector

regardless of whether or not they are members of the employer organisation with which the agreement is concluded. Practically all sector agreements are registered and therefore universally applicable within the sector to which they relate).

Spain (In Spain, these questions are merely hypothetical concerning the generally applicable agreements, whose application does not depend on the membership of the employer (or employee) organisation. But the employer can in any case "protect" his company agreement against the "invasion" of the sector agreement.

*2.6.2. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?*

Yes: Finland,

Sweden (The employer's entering into an employer organization does not mean that he will be automatically bound by agreements signed by that organization in so far as he is already bound by another collective agreement (in this case the agreement O1).,

Venezuela (If an employer has signed a collective agreement with an employees' organisation and joins an employers' organisation that has already signed another collective agreement with the same employees' organisation, the joining employer is governed by the collective agreement previously subscribed)

No:

Belgium,

Denmark,

Finland,

France,

Germany (In case of competing bargaining agreements, the valid agreement is established by particular conflict rule),

Israel (If there is a contradiction between agreements, then according to Collective Agreements Law, "the provisions that benefit the employee shall be applied").

Italy (the "old" agreement should be applied until its time of expiry, unless a different deal is done with A1).

Slovenia,

Not relevant: Ireland

*2.6.3. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?*

Yes:

Finland (If the two agreements regulate the same work, but the terms and conditions are different – as would normally be the case - the earlier agreement remains applicable until the end of the contract period (time priority).

Venezuela (Same reason as answer to question 2.6.2.)

No: Belgium,

Denmark (but the employer may by joining the employers' organization be obliged to free himself from the first agreement according to the rules and regulations of the employers' organization).

France,

Germany,

Ireland,

Italy (The agreement with the other employee organization should still apply to the employees belonging to that organisation), Slovenia, Sweden,

Not relevant: Ireland

### **3. Employer's use of competing agreements**

*An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.*

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or*
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or*
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?*

b):

Germany (It is however possible that the individual employment agreement of an employee, who is a member of A1, nevertheless refers to O2. In this case O2 is applied if it is more advantageous than O1. Otherwise O1 is valid),

Italy

c): Belgium, Denmark, Israel, Slovenia, Spain, Venezuela

The older agreement: Sweden, Finland

Not relevant: France, Ireland

### **4. Can an employer leave an employers' organisation and transfer to another one?**

*If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?*

It seems that all countries with some minor differences accept that an employer can leave an employers' organisation under the conditions and time-limit which may be prescribed in the organization's by-laws. If he has been bound by a collective agreement signed by the organization, he will continually be bound by the agreement until it expires. The same is the case if he is bound by an agreement signed by him, i.e. he is continually bound until its expiration.

## **CASE**

*Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.*

*A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.*

*For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.*

*Is A's strike notice legal?*

*Does it make any difference if A and S are members of the same main organisation?*

No comments: Belgium, France (as no demarcation agreements exist).

Denmark: The case is inspired from a Danish Labour Court case from 1976. The Labour Court ruled that the strike notice was not legal with the following grounds (here simplified):

*B has for 6 years used the agreement between B and the employee organization S for all work performed at B without any objections from A. Therefore there is a presumption that the work is covered by this agreement*

*According to the demarcation agreement, it may be assumed that the work done at B belongs to A's area of interest.*

*However, since the agreements between trade unions do not bind employers, B is entitled to assume that all work at the company is covered by the existing agreement. Therefore, and since A and S both are members of Danish Confederation of Trade Unions (LO), it cannot be justified that the A during the period of a collective agreement by threat of a strike seeks to obtain a collective agreement with B.*

Finland: A's strike notice is legal as such. If there is no collective agreement binding organisation A in its relation to company B and providing for a peace obligation, A can take strike action against B. But as explained above (2.4), A cannot reach a collective agreement with B, which could legally replace the agreement that binds B in its relation to organisation S, as long as the latter agreement is in force. A demarcation agreement between A and S would be irrelevant here, and so would the membership of A and S in the same parent association

Germany: The fact that union A has not protested against the application of the collective agreement contracted with S does not impair the right of A to try to reach a collective agreement with B.

a) The notice of strike by A is permitted, because A and B share (have) a common area of interest ("Tarifzuständigkeit"). The fact that A and S have contracted a demarcation agreement does not prevent A from negotiating with B and noticing a strike against B.

b) It might make a difference if A and S are members of the same main organisation, whose rules of association provide a procedure to settle disputes over areas of interest ("Tarifzuständigkeit"), like e.g. the DGB in Germany. If A and S are members of the DGB, they have to make use of the DGB's arbitration procedure, in which a decision is made whether A or S is responsible for the area of interest in question. Only if A is deemed responsible, it may notice a strike against B.

Ireland: This raises questions as to the legal protection afforded to the taking of strike or industrial action. The first requirement for a lawful strike is that it be in furtherance of a trade dispute. That is defined as a dispute between workers and employers concerning the terms of employment or the conditions of employment of workers.

In so far as the issues postulated in the question involve the terms of employment of the workers, and the right to conclude a collective agreement do relate to conditions of employment, the strike would be lawful. However, in practice a strike in these circumstances could not occur. The dispute between the two unions would be referred to the ICTU and the question would be resolved within its procedures.

Israel: According to the Law in Israel at all times there is only one recognized representative workers' union in the workplace which is party to collective negotiations with the employer. In given circumstances only this union has the right to give notice of a strike against the company. A similar situation arose recently in a conflict at the National Israeli Railway Company between the Histadrut as the union party to an ongoing collective agreement, and an upcoming union claiming to be the workers' representative in the NIRC. The National Labour decided that the Histadrut which was already deeply involved in the collective negotiations has the lawfully recognized status as sole representative of the workers as such, and as the workers' representative to collective negotiations with the company.

Italy: The industrial action (strike notice) of employee organisation A should be found legal, because the existence of the collective agreement between the company B and the employee organisation S

does not bar a new different agreement, applicable for workers in the same company premises which are not members of organisation S. However, it does not seem possible that A and S are members of the same main organisation, which allegedly has been part of the agreement previously reached by S. (A should first of all withdraw from the main organisation).

Slovenia: Which collective agreement is valid for an individual employer depends on two criteria: the activities performed by employer and the membership in employer's association, which has signed a collective agreement. Employer alone decides about both and he is not bound by different agreements of Trade Unions.

If employer's association whose member is the company B signed a collective agreement with Trade Union S, company B (and all of its employees) is covered by this collective agreement and is not required to sign a collective agreement with union A.

Spain: Mutatis mutandis, the A's strike notice would not be legal in any case, under Spanish law.

Sweden; Firstly, a demarcation agreement between A and S does not in any way affect the legal situation for B. Furthermore, it makes no difference if A and S are members of the same main organization.

Would a strike undertaken by A be legal? The precise answer depends on the legal relation between B and S. If they have been mutually bound by a collective agreement which according to B and S in itself covers (or have been deemed to cover) the tasks in question – and this seems to be the case here – the fact that A and S enter into a demarcation agreement does not change the legal situation for B. This means that a strike undertaken by A is legal only if the purpose is not to replace this agreement with effect also for members of S. – If, on the other hand, B and S are not bound by a collective agreement that covers the tasks in question, there are in principle no legal obstacles against the strike undertaken by A.

Venezuela: No. Anti-competitive agreements (demarcation agreements) are not allowed in the Bolivarian Republic of Venezuela. However, the conditions of the collective labour convention become mandatory clauses and part of the individual work contracts signed while valid in the field of the convention, even for those employees who are not part of the union that subscribed the convention (Article 432 of the LOTTT). Therefore, the strike from the party A has no legal basis when B's convention is applied.

Moreover, in order for a strike to be legal in Venezuela, employees need to follow the procedure established by law: submit the request before the administrative authority, notify the employer, constitute a board of conciliation. In case the dispute is not solved, a board or arbitration must be constituted. Also, employees need to wait a short period of time to proceed to suspend collective work (Articles 472 and 487 of the LOTTT).

It makes no difference if A and S are members of the same main organisation, as the law recognises the same rights and duties for employees, whether they are members of the organisation.

## **Exhibit 1. National reports on the organisation of employees' representation and main trade unions**

### **Belgium**

#### ***Trade unions in Belgium***

There are three main trade unions in Belgium: ACV/CSC, ABVV/FGTB and ACLVB. These organizations defend the employee interests at the national inter-professional level. They treat the issues of general interest. These main unions have different ideological backgrounds. The first is akin to Christian social doctrine, the second to democratic socialism and the third to political liberalism.

The ACV/CSC and ABVV/FGTB reportedly both have more than 1.500.000 members. The ACLVB has about 275.000 members.

The ACV/CSC and ABVV/FGTB both have a two pillar structure. They are so called supra-organizations to which on the one hand sectional unions and on the other hand regional unions adhere.

The sectional unions are nationally organized and group workers per sector of economic activity. Belgium has no tradition of professional unions. There are for instance no unions for cleaning personnel. Cleaning personnel in a bakery is member of a different union than cleaning personnel in the car industry. The sectional unions have a separate organisational structure, and they exclusively defend the employee interests within their sector of economic activity.

The regional unions group all the workers of a certain geographic entity. They assure the inter-professional activity at the regional level. They are to a large extent administrative bodies that take care of union membership, legal assistance, promotion, etc.

The organisation of ACLVB is more centralised. Workers become directly member of the ACLVB itself.

#### ***Legal representativeness and Belgian trade unions***

The Belgian Constitution recognises the freedom of association<sup>1</sup>. Thus anyone can form new labour unions exercising their freedom of association at any time.

However, the Belgian legislator has given some legal privileges to the employee organisations that are declared legally representative.

In the past, the criteria of legal representativeness gave arise to some legal issues, because in the end it was the government that determined which unions were representative, since the 29 May 1952 Statute instituting the National Labour Council (NLC)<sup>2</sup> did not indicate the legal criteria to become member of the NLC, whereas other Acts referred inter alia to membership of the NLC as a criterion for legal representativeness.

However, since 1 January 2010, criteria for legal representativeness have been written down in the 1952 Statute instituting the National Labour Council. For the application of the 1952 Statute instituting the National Labour Council, the unions that meet the following criteria are deemed to be most representative (art. 2, § 4):

- operate nationwide and at the inter-professional level;
- represent the absolute majority of sectors of activity and worker categories in the public and the private sector, on condition that the majority of employees is represented;

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<sup>1</sup> Art. 27 of the 1994 Constitution.

<sup>2</sup> BS 31 May 1952.

- have on average at least 125.000 paying members in the four years preceding nomination for the NLC, including the members of associated organizations;
- aim at the defence of the interests of employees.

Following the modification of the 1952 Statute instituting the National Labour Council, other legal acts that determine criteria for legal representativeness of unions have also been modified. They currently provide that the following unions are representative<sup>3</sup>:

- the unions that exist nationwide and are represented in the NLC and the Central Economic Council (CEC)<sup>4</sup>;
- the unions that are associated to or are a member of these unions.

Only the three aforementioned trade unions, and the unions that adhere to them, are declared legally representative.<sup>5</sup> This is a stabilising factor in the collective labour relations between employers and employees (cf. *infra*).

Legal representativeness entails, *inter alia*, the following privileges:

- the collective agreements the representative unions conclude, have binding force in accordance with the provisions of the CLA-Statute (cf. *infra*);
- membership of joint industrial committees;
- the right to start court proceedings to safeguard the rights that workers derive from collective agreements (art. 4 of the aforementioned 5 December 1968 Act), or from certain statutes (e.g. discrimination law, art. 35, 2°, of the 10 May 2007 Act on the combating of discrimination between man and women, art. 32, 2° of the 10 May 2007 Act on fighting some forms of discrimination);
- the right to register candidates for the elections of the enterprise council and the committee on the prevention and protection at work;
- the right to represent workers in court proceedings.

### ***Rules on the right to conclude collective labour agreements***

From the preceding it follows that not only the main trade unions themselves, but also the adhering sectional unions can conclude collective labour agreements or take part in court proceedings.

It is not for the main trade unions to directly issue rules on the right to conclude collective agreements with employers.

According to article 5 of the CLA-Statute a collective labour agreement (CLA) is an agreement concluded between one or more employee organisations and one or more employers' organisations or employers, that establishes the individual and collective relations between employers and employees in enterprises or economic sectors, and that establishes the rights and obligations of the contracting parties.

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<sup>3</sup> See art. 14, §1, 4° of the 20 September 1948 Statute on the Organisation of the Economy, art. 3, 1° and 22° of the 5 December 1968 Statute on Collective Labour Agreements and Joint Industrial Committees (*BS* 15 January 1969; hereafter CLA-Statute), art. 3, § 2, of the 4 August 1996 Act on the Protection of the Well-Being of Workers at Work (*BS* 18 September 1996)

<sup>4</sup> The legislation on the CEC refers *inter alia* to art. 2, § 4, of the NLC Act for determining the members of the CEC (art. 2 of the 20 September 1948 Act on the organisation of the economy [*BS* 27 September 1948]).

<sup>5</sup> There is one exception: certain organisations of executives are also considered legally representative within the framework of the provisions on the institution of enterprise councils at the level of the undertaking.

Thus in principle any representative employee organisation, be it a main organisation or a sectional organisation, can conclude collective labour agreements with employers or employer organisations.

However, the Belgian legislator has also instituted the national labour council and joint industrial committees, and developed a certain hierarchy between collective labour agreements concluded within those committees and outside the committees.

To understand this, one needs to comprehend the functioning of the national labour council (NLC) and the joint industrial committees (JIC) on the one hand<sup>6</sup>, and the binding force of a collective labour agreement (CLA) on the other hand.

- The functioning of the NLC and the JIC – Only the main trade unions, not the sectional member organisations are a member of the NLC. The NLC has various competences. It can give the legislator advice on general social matters, it is competent to settle disputes on the competence of the JIC's, it can function as a mediator in collective labour disputes, and it is competent to conclude collective labour agreements (CLAs).

The JIC's are instituted by Royal Decree. They are competent for certain sectors of economic activity or for certain enterprises.<sup>7</sup> Their competence includes concluding collective labour agreements, prevent or solve disputes between employers and employees, give advice to the Government, the NLC, the CEC on matters belonging to their competence and any other task the law assigns to them.<sup>8</sup>

It is thereby important to realize that the binding force that is attached to collective labour agreements concluded within the JIC's (cf. *infra*), only holds if all organisations that are member of the JIC have signed the agreement.<sup>9</sup> The same used to be the case for collective labour agreements concluded within the NLC. However, since 1 January 2010, there has been an exception to the traditional rule of unanimity: it is sufficient that 90% of the members that represent the employees have signed the agreement.<sup>10</sup> This exception to the unanimity rule was written down in the NLC-Statute at the time when employers organisations that represent non-commercial employers became full member of the NLC (before 1 January 2010 those organisations were associated members with limited rights). The modification of the unanimity rule was motivated by the necessity to prevent a potential blocking of the regulatory power of the NLC by a small minority, since this would seriously undermine the socio-economic development of the country.<sup>11</sup>

- The binding force of collective labour agreements – It follows from the aforementioned legal definition of the CLA that there are two types of provisions in CLAs.

First there are the so called obligatory provisions, i.e. the provisions that determine the rights and obligations of the contracting parties to the CLA. These can be express provisions (such as the obligation to cooperate in the creation of a specific social institution), or implied terms. It is generally accepted in Belgium that there are at least two types of implied obligations for the

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<sup>6</sup> There are also joint industrial sub-committees. The rules that apply to joint industrial committees, *mutatis mutandis* apply to joint industrial sub-committees. In order to not unduly complicate matters, the text will not refer to joint industrial sub-committees.

<sup>7</sup> Art. 35 CLA-Statute. For a recent list of existing JIC's, see Lijst van de paritaire comités op datum van 26 april 2012, BS 25 juni 2012.

<sup>8</sup> Art. 38 CLA-Statute.

<sup>9</sup> Art. 24 CLA-Statute.

<sup>10</sup> Art. 24 CLA-Statute, as amended, *juncto* art. 5bis NLC-Statute.

<sup>11</sup> See Wetsontwerp houdende diverse bepalingen, *Parl.St.* Kamer 2009-2010, nr. 52-2299/001, 66.

contracting parties: a relative peacekeeping duty, and a duty to exercise influence. The relative peacekeeping duty essentially means that the parties can not undertake actions to modify the content of the CLA during the validity of the CLA. The duty to exercise influence obliges the contracting parties to use the influence they have vis-à-vis their members to convince them to respect the provisions of the CLA.

Aside from obligatory provisions, there are the normative provisions, i.e. the provisions that establish the individual and collective relations between employers and employees in enterprises or economic sectors. Within the normative provisions, a distinction is made between the individual normative provisions and collective normative provisions. The first are the provisions that regard the individual relation between the employer and the employee, such as the wages, function classification, working time, ... The latter are provisions that have to do with the collective labour relations at the level of the enterprise or at the sectional level, such as provisions regarding the trade union representatives at the firm level.

The normative provisions of any CLA in the sense of the CLA-Statute apply to employers bound by the CLA and all their employees, regardless of whether or not they are member of a trade union.

Employers bound by the CLA, are the employers who are either party to the agreement or have acceded to it, or are member of an employer organisation that has signed the agreement or has acceded to it.<sup>12</sup> Moreover, the individual normative provisions of a CLA that has been concluded within the National Labour Council or a joint industrial committee, are supplementary applicable to all employers that are within the jurisdiction of the NLC or the JIC.<sup>13</sup> The binding force can be extended by Royal Decree, in which case all – i.e. the individual and the collective – normative provisions of the CLA imperatively apply to all employers within the jurisdiction of the NLC or the JIC, and all of their employees.<sup>14</sup> Thus, the CLA-Statute conceives the CLA as a contract with regulatory effects.<sup>15</sup>

Given this concise overview, one should be able to comprehend the meaning of the hierarchy between various CLAs embodied in article 51 of the CLA-Statute. This provision holds that the following hierarchy of norms exists between the normative provisions of various CLAs:

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<sup>12</sup> CLA-Statute, art. 19.

<sup>13</sup> CLA-Statute, art. 26.

<sup>14</sup> CLA-Statute, art. 31.

<sup>15</sup> Ontwerp van wet betreffende de collectieve arbeidsovereenkomsten en de paritaire comités, (1966-67) Parl. St. Senaat, nr. 148, in particular 88 and 89 (advise of the Council of State). Also see *i.a.* Arbitragehof nr. 37/1993, 19 mei 1993 <http://www.arbitrage.be> (in particular B.7.1); R.v.St. nr. 53.714, 14 juni 1995, ((4 juni 2003)) <http://www.raadvst-consetat.be/>.

The CLAs that are declared universally applicable by Royal Decree, in the following order:

- CLAs closed in the NLC;
- CLAs closed in the JIC

CLAs that are not declared universally applicable, provided that the employer has signed the CLA, or is affiliated to an organisation that has signed it, in the following order:

- CLA closed in NLC;
- CLA closed in JIC;
- CLA closed outside a joint body (typically at level of the enterprise)

The CLA closed in a joint body that is not declared universally applicable, when the employer, although he has not signed the CLA or is not affiliated to an organisation that has signed it, belongs to the resort of the joint body in which the CLA is closed.

The CLA closed in a joint body that is not declared universally applicable, when the employer, although he has not signed the CLA or is not affiliated to an organisation that has signed it, belongs to the resort of the joint body in which the CLA is closed  
Rules that regulate the relationship between the different employee organizations

Generally speaking, the main trade unions are not in a position to issue rules that regulate the relationship between the different employee organisations, such as their mutual competition for members. This is to a large extent due to the fact that the power relations between the various unions are not in the first place determined by the unions themselves, but rather by the workforce, in the course of the four yearly social elections.

Every four years there are social elections in the Belgian enterprises. The main unions submit candidates and the workers of the enterprise elect their representatives in the enterprise council and/or the committee on prevention and protection at work. The results of these elections are considered to reflect the power relations between the three main unions.

For instance, it is not for the main unions to determine which employee organisations are eligible to participate in a JIC. The CLA-Statute provides that organisations are asked by a message in the Belgisch Staatsblad/Moniteur Belge (State Gazette) to inform the competent Minister as to whether they want to be part of a certain JIC, and to prove their representativeness. It is then for the Minister to decide which organizations can represent the employees of a certain sector, and how many mandates any organisation receives within the JIC.<sup>16</sup> The decision of the minister is not merely political. In principle, the assignment of the mandates for the various organisations is determined based on the results of the most recent social elections for the enterprise council and the committee on prevention and protection at work, on the trade unions strength within the sector, or on an agreement between the concerned employee organisations.<sup>17</sup>

Another illustration is useful to fully understand the remainder of the answers to this questionnaire: the trade union representatives at the firm level<sup>18</sup>, who are competent to

<sup>16</sup> Art. 42 CLA-Statute.

<sup>17</sup> See P. HUMBLET en M. RIGAUX, *Synopsis van het Belgische arbeidsrecht*, Antwerpen, Intersentia, 2009, 4<sup>e</sup> ed., 367.

<sup>18</sup> The framework regulation on the trade union representatives at the level of the enterprise is NLC-CLA nr. 5, available on <http://www.nar-cnt.be>.

negotiate, but not to conclude the CLAs,<sup>19</sup> are also to a certain extent determined by the aforementioned social elections, rather than by a simple ruling of one or more of the main trade unions. Trade union representatives are instituted at the level of the enterprise when one or more employee organisations ask the employer to do so. Which employee organisations may submit candidates? Any organization that is a member of the JIC that is competent for the enterprise of the employer. What if an organization is not a member of the JIC? In that case, it can still submit candidates if it proves to be representative. How may it prove this? It is supposed to be representative when it has obtained at least one mandate in the course of the latest social elections for the committee on the prevention and protection at work.<sup>20</sup>

## **Denmark**

In Denmark there are a number of main organizations that have a larger number of unions, respectively, employers' organizations or individual employers as members. However, there are also a number of trade unions and employers' organizations and employers which are not members of a main organization.

There are three employee's main organizations in Denmark. The LO ("Landsorganisationen i Danmark") "Danish Confederation of Trade Unions" has 18 affiliated nation-wide federations with 1, 1 million members. The LO-federations have traditionally represented blue-collar workers employed in manufacturing industries, but now a significant number of members work in various services. The FTF "Confederation of Professionals in Denmark" is the trade union confederation for 450,000 public and private employees. FTF has approximately 81 affiliated organizations. The five largest calculated by number of members are: The Danish Union of Teachers (Danmarks Lærerforening), The Danish Nurses Organization (Dansk Sygeplejeråd), The Danish National Federation of Early Childhood Teachers and Youth Educators (BUPL) the Financial Services Union (Finansforbundet), Danish Association of Social Workers (Dansk Socialrådgiverforening). The AC "The Danish Confederation of Professional Associations" is an umbrella organisation for 23 member organizations representing around 210.000 members.

The central organizations usually do not conclude collective agreements, except for so called general agreements, which cover issues like employment protection or the shop steward system.

## **Finland**

The organisation of employees' representation, main trade unions There are three employee's central organisations in Finland. The Central Organization of Finnish Trade Unions SAK has 20 affiliated nation-wide federations. The SAK federations have traditionally represented blue-collar workers employed in manufacturing industries, but to date a significant number of members work in various services. The Finnish Confederation of Professionals STTK has 18 affiliated trade unions with white-collar workers as their members. Akava, the Confederation of Unions for Professional and Managerial Staff in Finland, is a trade union confederation for those with university, professional or other high-level education. Akava has 35 national member associations. The central organisations usually do not conclude collective agreements, except for so called general agreements, which cover issues like employment protection or the shop steward system. Neither do the central organisations regulate the mutual relationships of the national federations or their right to conclude collective agreements.

## **France**

In France, all unions may set up in a firm, provided that they at least have two years length and that their statutes cover geographically and professionally the company. The unions may then designate union representatives in contact with employees. On the other hand, only representative unions may negotiate collective agreements. To be representative an union, since a law of 20 august 2008, must have put forward lists of candidates to the elections of members of workcouncils and obtained 10% of

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<sup>19</sup> Art. 11, 2° of NLC-CLA nr. 5.

<sup>20</sup> Art. 7 of NLC-CLA nr. 5.

the valid votes ("suffrages exprimés"). To negotiate collective agreements at a higher level, the votes of the unions in the different firms have to be added.

Collective agreements are valid if signed by representative unions making up at least 30% of valid votes in last elections. But they then apply to all employees, would they be unionized or not.

In the companies, there are often 4 or 5 unions present, having union representatives.

## **Germany**

a) In Germany employees are represented at company and plant level by works councils and for example representatives on the supervisory board (Arbeitnehmervertreter in Aufsichtsräten) and by **trade unions**.

b) Most of the German trade unions belong to one of three umbrella organisations, the German Trade Union Association (Deutscher Gewerkschaftsbund, DGB), the German Civil Servants' Association (Beamtenbund und Tarifunion dbb) and Christian Trade Union Federation (CGB). The most important one with the largest number of members is the DGB. Furthermore there are also a number of trade unions which are not affiliated to an umbrella organization and by which often specific personal groups are organized (for example Marburger Bund - Verband der angestellten und beamteten Ärzte in Deutschland; Vereinigung Cockpit e.V., die Berufsorganisation des Cockpitpersonals in Deutschland). Pursuant to section 11 (2 number 4) Labour Court Act (ArbGG) umbrella organizations are allowed to represent their affiliated unions and the members thereof in court proceedings.

c) Section 2 (2) Collective Bargaining Agreements Act (Tarifvertragsgesetz - TVG) stipulates that main trade unions (Spitzenorganisationen) are allowed to conclude collective agreements for their member unions if they are authorized by them.

*[Section 2 (2) TVG: Federations of trade unions and of employers' associations (central organizations) may conclude collective bargaining agreements on behalf of their affiliates if empowered to do so.]*

The DGB, however, is not involved in collective bargaining directly with employers and employers' associations.

## **Ireland**

There is a single trade union centre in Ireland – The Irish Congress of Trade Unions (ICTU). This is the umbrella organisation for all trade unions in both the Republic of Ireland and in Northern Ireland. The ICTU has rules which regulate the relations between its affiliated trade unions and determine the employments and industrial sectors in which its affiliated unions can organise and represent workers. These rules are voluntary in nature and they do not have the force of law. The ICTU has machinery in place under its constitution for resolving disputes between trade unions on these matters. Where a trade union fails to abide by the directions of the ICTU in relation to the recruitment or representation of members it can be expelled from the organisation but is otherwise legally free to continue to operate as a trade union. While there have been occasions on which a union has been disaffiliated in such circumstances they are rare.

The ICTU also has a role in coordinating the activity of trade unions in particular sectors and employments. Where there is a multiplicity of trade unions in an employment or sector (for example in the public sector, construction and transport) industrial committees are formed representing the interests of all affected unions. These committees negotiate with relevant employers or their organisations and conclude collective agreements for the sector or employment concerned which apply equally to each of the trade unions in the sector. These committees also determine the broad policy issues in relation to the sectors that they represent. Where negotiations take place with individual employers and where there is a single union representing either the entire workforce or a discrete grade or category of employees, each union is free to conduct its own negotiations and conclude a collective agreement.

Up until 2009 the ICTU negotiated with employer organisations and the Government (both as an employer and as Government) on national partnership agreement, which, amongst other things,

determined increases in pay for all workers. These arrangements have now been discontinued and collective bargaining is currently conducted at the level of the individual employment or sector.

## **Israel**

Approximately 30% of workers in Israel are organized in unions today, most of them in the General Federation of Labourers in the Land of Israel, known as the Histadrut, which is Israel's largest workers' organization of trade unions. Established in December 1920 during the British Mandate for Palestine, the Histadrut is a supra-organisation, within which are organized various sectors of workers in both the public and private sectors.

The Histadrut established a constitution applicable to its organized members and workers' institutions, which regulate, inter alia, the right to choose representatives of employees in workplaces and its institutions.

Workers' association usually made as Industrial unions in the Histadrut, formed in large or small units, in various working sites. Along with the Industrial unions, there are bargaining units at the same working place, usually defined as craft bargaining units.

The recognition of bargaining units is derived from an agreement between the parties to collective labour relations. This collective consent, allowing different bargaining units, is generally between the employer and the Histadrut as the general union which represents the workers.

As part of labour relations in Israel, there are also professional unions such as: the Academic Staff Union, Teachers' Union, Israel Medical Association (ima), etc.

In some working places, more than one union is recognized as the representative workers' union. This is, for example, the case in hospitals where most of the workers are represented by the Histadrut, while the doctors' sector is represented by IMA. Another example is the Open University, where the Histadrut is the recognized representative of the workers, while the Junior Academic Staff is represented by a different union.

In recent years new labour organizations have begun to organize workers, especially in workplaces where the Histadrut is not the representative labour organization, or failed active representation on the workers behalf.

According to Collective Agreements Law, 5717 – 1957, the workers' organizations which represents at least 33% of the workers in the bargaining unit, is recognized as the sole and only representative union of all the workers in the same unit, which is generally the entire workplace. Accordingly this recognized workers union can be party to a special or general collective agreement; can represent the workers' views and interests in internal working mechanisms of collective dispute resolution; can represent individual workers or collective workers' interests, at legal proceedings in labour courts; and as party to a collective agreement may be present at every proceeding regarding collective agreement interpretation, and claim [Labour Court Law, 1969]

The Histadrut, as the main union, excluding its' own sectors of workers, is in no position to issue rules that regulate the relationship between the different employee organisations, which are not part of its sectors' such as their mutual competition for members and the right to conclude collective agreements with employers.

## **Italy**

In Italy employees representation is organised in workers councils inside the single production unit of a business concern, main trade unions for the single professional sector (es. engineering industries), main "supra" trade unions ("confederazioni") grouping together various professional trade unions for many different sectors. Unions activity is ruled by the principle of freedom of choice of the party of a collective agreement, which means that the employer, or employer union, can choose any employees organisation to conclude a collective agreement.

There are collective agreements for the single business concern (*contratto aziendale*) , the whole professional category of workers (*contratto nazionale*) or for the same professional category in a territorial area. "*Contratti nazionali*" for professional categories of workers are usually concluded by employers organisations and workers main trade unions (*supra* organisations= *confederazioni*).

Different rules are stated for the public sector (see 1.5., 1.6)

The rule of freedom of activity entails the validity of separate agreements with different unions for the same company, or even the same professional sector. Statute law says that "works councils may be formed by workers in any production unity, within the framework of the trade union associations that have signed collective agreements applied in the production unity". Nothing is said, however, about the rules governing the legal effect of collective agreements, or the proceeding whereby works council are formed

## **Slovenia**

Slovenian Constitution defines freedom of the trade unions as a special right to establish, operate and join trade unions freely. Employers' rights of association is guaranteed under the general constitutional right of association. State may not prescribe such conditions that might directly or indirectly affect the right to freely form trade unions. The freedom to form trade unions also means that the unions themselves adopt its own rules and internal regulations, to freely choose their representatives and to self-manage and operate their programs of action. The state should not interfere in the exercise of those rights, except in so far as in the individual cases it was necessary to protect individuals against abuses by the union or its organs: action contrary to the rules, unreasonable or arbitrary rules, unacceptable consequences, and the like.

A special Act of the representativeness of trade unions (ZRSin) provides a way to obtain legal personality and way of obtaining the representativeness of trade unions. Trade Union shall acquire legal personality on the date of the decision on the retention of the statute or other basic act. Conditions in ZRSin to issue a decision requires the submission of an Statute, proof that the union was really established, and that the request was made by a person authorized by Trade Union. Administrative authority the facts just recorded, and on this basis, the decision only finds that the union became a legal entity. None of these conditions does not affect the right of anyone to establish Trade Union, adopt the statute and choose Trade Union representatives.

The issue of representativeness is linked to trade union freedom of action. All trade unions are representative for representing its members in the promotion and protection of their economic and social interests and rights. What ZRSin essentially governed is the position of "most representative trade union" - union, to which the legislature recognizes certain specific rights. One of the consequences of trade union pluralism is also a large number of unions representing their own interests (in a given area, in the particular activity, industry or profession or in a single organization) and each of them alone decide whether to unite with other Trade Unions in Federation or Confederation or to otherwise coordinate common interests. In relations to the State and to employers each Trade Union act alone as the representative of its members. Where there is a relationship with employers and the state in matters of general validity, it is accepted an option, which allows the representation of only those unions, which represent the majority of employees. This avoids the excessive number of negotiation and contract partners, addressing only a partial interest in solving generally valid issues and facilitate the achievement of concrete results.

Representative trade unions are those that:

- are democratic and exercising the freedom to join unions, freedom of their operation and implementation of membership rights and obligations
- continuously function for at least six months;

- are independent of state authorities and employers,
- are funded mainly from fees and other internal resources,
- have a minimum number of members in accordance with the provisions of ZRSin.

Representative are Federations or Confederations of Trade Unions (main unions) which members are Trade Unions of different industries, occupations or activities in which members are at least 10% of workers in specific industries, business or profession. In industry, business, profession or employer representative are Trade Unions which are members in an Trade Union Federation or Confederation which is representative of the state. In industry, business, occupation or employer representative is also the Trade Union that is not a member of the Federation or Confederation, if it is a member of at least 15% of workers in specific industries, business, occupation or employer. Under the same condition ( membership of at least 15% of workers) representative is also Trade Union in the employer.

In Slovenia there are currently 45 registered representative Trade Unions for certain activities and professions, among which are six Federation and Confederation of Trade Unions for the private sector and one Confederation of Trade Unions for public sector.

Collective agreements are concluded by Trade Unions or associations of trade unions as a party on the side of workers and employers or associations of employers as a party on the side of employers, in accordance with their statutes or other adequate documents.

Collective agreements in the binding section regulate the rights and commitments of parties which concluded the agreement, and may also regulate the manner of peaceful settlement of collective labour disputes.

The Labour Courts have jurisdiction over the collective labour disputes between the parties to the collective agreement, or between parties to the collective agreement and third persons, in respect of the existence or non-existence of the collective agreement or its implementation, and disputes over the representativeness of trade unions.

## Spain

On the trade union side, there are in Spain two supra-organisations or main trade unions: CC.OO. (Trade Union Confederation of Workers' Commissions) and UGT (General Workers' Confederation). This national dominance of two main trade unions has led to the coining of the term "bi-unionism" to describe the structure of the trade union movement. It would in fact be more accurate to speak of "imperfect bi-unionism", since there are other trade unions organisations which, although clearly minority groups in the system of industrial relations representation as a whole, are important or even dominant in certain regions (e.g. ELA-STV in the Basque Country) or specific occupational sectors (e.g., USO, the Workers' Trade Unionist Confederation, in large enterprises, particularly public enterprises; CSIF, Independent Public Employees Trade Unionist Confederation, in public administration).

The recurrent appellation "confederation" is misleading. The most outstanding feature of the Spanish trade unions is the high degree of centralization, which is only partially offset by the activities of representative bodies within enterprises. With rare exceptions, it is the trade union confederations which set until now the collective bargaining policy, take part in discussions with the authorities, are represented on the governing bodies of public social services, manage the bulk of the financial resources and are responsible of internal discipline.

The framework of the trade union movement as described in broad outline here has been shaped by various factors. A key factor is historical: in the years of "political transition" (from Franco-regime to the Parliamentary Monarchy) a large number of regional and

sectoral trade unions were set up under the impetus of the respective recently legalised confederations, with a view to the rapid reconstruction of the whole machinery. Another important factor is legal: the very favourable position of the “most representative” trade unions is projected from the main trade unions onto each and every regional district by the mechanism of the “extension of representativeness” to the bodies included in each district. Conclusion: the atmosphere lacks of “oxygen” out of the main trade unions.

## **Sweden**

In Sweden, the vast majority of those trade unions which cover the whole nation are affiliated to one of the three main organizations on the employee side. The role of these main organizations normally is not to directly represent employees vis-à-vis employers, but to deal with general issues that arise in the cooperation between the member unions and to represent the unions and their members in general political and social issues. The biggest main organization, LO, is an association of 14 trade unions with a total of around 1.7 million (blue-collar) workers. TCO is an association of 16 trade unions with a total of around 1.2 million (white-collar) workers. Finally, SACO is an association of several trade unions with a total of 0.5 million employees with academic education. These main organizations normally do not act in court proceedings, unless there is a legal dispute concerning the interpretation of an agreement which the organization itself has entered into. Collective bargaining agreements are generally entered into by the affiliated trade unions, which also may represent the member workers in court. In disputes that may be dealt with by the Labour Court as a first and last instance, the trade union has under some circumstances a legal right to represent its member. In practice, the trade unions also represent their members in other disputes, i.e. disputes that are dealt with by the District Courts as a first instance. A main organization may issue rules on the relationship between the different member trade unions only to the extent that this is provided for in the by-laws of the main organization. In other words, the deciding power of the main organization is depending on what the member trade union has accepted by being a member. At least as far as LO is concerned, there is a body that in practice sometimes makes decisions on demarcation between member trade unions which have not themselves been able to make an agreement as to which trade union should organize a certain category of workers.

## **Venezuela**

In Venezuela, the employee's representation is free. The 2012 Organic Labour Law of Worker (LOTTT, for its acronym in Spanish) only demands that the statutes include the number of members of the board of directors and other directing boards, their chores, duration and positions that are covered by the union sphere, as well as the way such directors are elected, always based under democratic principles, according to what is established in the law. The causes and proceedings to revoke the mandate from the members of the board of directors and how members can be substituted during the existence of the board must be also mentioned (Article 384.10, .11 and .12 of the LOTTT).

Employees have the right to create autonomous and permanent unions and these, at the same time, have the right to constitute federations and confederations, even internationally, in order to defend, develop and protect their individual rights and interests, as well as to achieve social, economic and moral improvement for their associates (Articles, 353 and 356 of the LOTTT). Both the organisations and supra-organisations are legally able to represent their affiliates when dealing with collective labour negotiations and disputes, especially in conciliation, mediation and arbitration proceedings. They are also able to promote, negotiate, celebrate, review and modify collective labour conventions and demand their implementation. They can also represent and defend the employees in need, even if they are not members of the union, in the exercise of their rights and protection of their individual and collective interests, in their

relationships with their employer and administrative procedures. In case of legal procedures, they could represent employees, with the appropriate legal assistance (Article 367.6, .7 and .9 of the LOTTT).

Federations and confederations are entitled to issue statutory rules to regulate the relation between different organisations of employees. However, the LOTTT ensures the principle of union autonomy, according to which all unions have the right to enjoy full autonomy and special protection from the State. No union may be intervened or suspended by other unions, nor their functions may be restricted or put under pressure, nor discriminated, as all these actions are against the right of democratic participation (Articles, 354 and 357 of the LOTTT).

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## NATIONAL REPORTS

### Belgium

National reporter: Judge Koen Mestdagh, Member of the Labour Chamber of the Court of Cassation. Report made by Dr. Mathieu van Putten, Legal Secretary, Court of Cassation

#### 1. Competing employee organisations

##### *The organisation of employees' representation, main trade unions*

###### *Trade unions in Belgium*

There are three main trade unions in Belgium: ACV/CSC, ABVV/FGTB and ACLVB. These organizations defend the employee interests at the national inter-professional level. They treat the issues of general interest. These main unions have different ideological backgrounds. The first is akin to Christian social doctrine, the second to democratic socialism and the third to political liberalism.

The ACV/CSC and ABVV/FGTB reportedly both have more than 1.500.000 members. The ACLVB has about 275,000 members.

The ACV/CSC and ABVV/FGTB both have a two pillar structure. They are so called supra-organizations to which on the one hand sectional unions and on the other hand regional unions adhere.

The sectional unions are nationally organized and group workers per sector of economic activity. Belgium has no tradition of professional unions. There are for instance no unions for cleaning personnel. Cleaning personnel in a bakery is member of a different union than cleaning personnel in the car industry. The sectional unions have a separate organisational structure, and they exclusively defend the employee interests within their sector of economic activity.

The regional unions group all the workers of a certain geographic entity. They assure the inter-professional activity at the regional level. They are to a large extent administrative bodies that take care of union membership, legal assistance, promotion, etc.

The organisation of ACLVB is more centralised. Workers become directly member of the ACLVB itself.

##### *Legal representativeness and Belgian trade unions*

The Belgian Constitution recognises the freedom of association<sup>21</sup>. Thus anyone can form new labour unions exercising their freedom of association at any time.

However, the Belgian legislator has given some legal privileges to the employee organisations that are declared legally representative.

In the past, the criteria of legal representativeness gave rise to some legal issues, because in the end it was the government that determined which unions were representative, since the 29 May 1952 Statute instituting the National Labour Council (NLC)<sup>22</sup> did not indicate the legal criteria to become member of the NLC, whereas other Acts referred *inter alia* to membership of the NLC as a criterion for legal representativeness.

However, since 1 January 2010, criteria for legal representativeness have been written down in the 1952 Statute instituting the National Labour Council. For the application of the 1952 Statute instituting the National Labour Council, the unions that meet the following criteria are deemed to be most representative (art. 2, § 4):

- operate nationwide and at the inter-professional level;
- represent the absolute majority of sectors of activity and worker categories in the public and the private sector, on condition that the majority of employees is represented;
- have on average at least 125.000 paying members in the four years preceding nomination for the NLC, including the members of associated organizations;
- aim at the defence of the interests of employees.

Following the modification of the 1952 Statute instituting the National Labour Council, other legal acts that determine criteria for legal representativeness of unions have also been modified. They currently provide that the following unions are representative:<sup>23</sup>

- the unions that exist nationwide and are represented in the NLC and the Central Economic Council (CEC);<sup>24</sup>
- the unions that are associated to or are a member of these unions.

Only the three aforementioned trade unions, and the unions that adhere to them, are declared legally representative.<sup>25</sup> This is a stabilising factor in the collective labour relations between employers and employees (cf. *infra*).

Legal representativeness entails, *inter alia*, the following privileges:

- the collective agreements the representative unions conclude, have binding force in accordance with the provisions of the CLA-Statute (cf. *infra*);
- membership of joint industrial committees;
- the right to start court proceedings to safeguard the rights that workers derive from collective agreements (art. 4 of the aforementioned 5 December 1968 Act), or from

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<sup>21</sup> Art. 27 of the 1994 Constitution.

<sup>22</sup> BS 31 May 1952.

<sup>23</sup> See art. 14, §1, 4° of the 20 September 1948 Statute on the Organisation of the Economy, art. 3, 1° and 22° of the 5 December 1968 Statute on Collective Labour Agreements and Joint Industrial Committees (BS 15 January 1969; hereafter CLA-Statute), art. 3, § 2, of the 4 August 1996 Act on the Protection of the Well-Being of Workers at Work (BS 18 September 1996)

<sup>24</sup> The legislation on the CEC refers *inter alia* to art. 2, § 4, of the NLC Act for determining the members of the CEC (art. 2 of the 20 September 1948 Act on the organisation of the economy [BS 27 September 1948]).

<sup>25</sup> There is one exception: certain organisations of executives are also considered legally representative within the framework of the provisions on the institution of enterprise councils at the level of the undertaking.

certain statutes (e.g. discrimination law, art. 35, 2°, of the 10 May 2007 Act on the combating of discrimination between man and women, art. 32, 2° of the 10 May 2007 Act on fighting some forms of discrimination);

- the right to register candidates for the elections of the enterprise council and the committee on the prevention and protection at work;
- the right to represent workers in court proceedings.

### ***Rules on the right to conclude collective labour agreements***

From the preceding it follows that not only the main trade unions themselves, but also the adhering sectional unions can conclude collective labour agreements or take part in court proceedings.

It is not for the main trade unions to directly issue rules on the right to conclude collective agreements with employers.

According to article 5 of the CLA-Statute a collective labour agreement (CLA) is an agreement concluded between one or more employee organisations and one or more employers' organisations or employers, that establishes the individual and collective relations between employers and employees in enterprises or economic sectors, and that establishes the rights and obligations of the contracting parties.

Thus in principle any representative employee organisation, be it a main organisation or a sectional organisation, can conclude collective labour agreements with employers or employer organisations.

However, the Belgian legislator has also instituted the national labour council and joint industrial committees, and developed a certain hierarchy between collective labour agreements concluded within those committees and outside the committees.

To understand this, one needs to comprehend the functioning of the national labour council (NLC) and the joint industrial committees (JIC) on the one hand<sup>26</sup>, and the binding force of a collective labour agreement (CLA) on the other hand.

- The functioning of the NLC and the JIC – Only the main trade unions, not the sectional member organisations are a member of the NLC. The NLC has various competences. It can give the legislator advice on general social matters, it is competent to settle disputes on the competence of the JIC's, it can function as a mediator in collective labour disputes, and it is competent to conclude collective labour agreements (CLAs).

The JIC's are instituted by Royal Decree. They are competent for certain sectors of economic activity or for certain enterprises.<sup>27</sup> Their competence includes concluding collective labour agreements, prevent or solve disputes between employers and employees, give advice to the Government, the NLC, the CEC on matters belonging to their competence and any other task the law assigns to them.<sup>28</sup>

It is thereby important to realize that the binding force that is attached to collective labour agreements concluded within the JIC's (cf. *infra*), only holds if all organisations that are

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<sup>26</sup> There are also joint industrial sub-committees. The rules that apply to joint industrial committees, *mutatis mutandis* apply to joint industrial sub-committees. In order to not unduly complicate matters, the text will not refer to joint industrial sub-committees.

<sup>27</sup> Art. 35 CLA-Statute. For a recent list of existing JIC's, see Lijst van de paritaire comités op datum van 26 april 2012, BS 25 juni 2012.

<sup>28</sup> Art. 38 CLA-Statute.

member of the JIC have signed the agreement.<sup>29</sup> The same used to be the case for collective labour agreements concluded within the NLC. However, since 1 January 2010, there has been an exception to the traditional rule of unanimity: it is sufficient that 90% of the members that represent the employees have signed the agreement.<sup>30</sup> This exception to the unanimity rule was written down in the NLC-Statute at the time when employers organisations that represent non-commercial employers became full member of the NLC (before 1 January 2010 those organisations were associated members with limited rights). The modification of the unanimity rule was motivated by the necessity to prevent a potential blocking of the regulatory power of the NLC by a small minority, since this would seriously undermine the socio-economic development of the country.<sup>31</sup>

- The binding force of collective labour agreements – It follows from the aforementioned legal definition of the CLA that there are two types of provisions in CLAs.

First there are the so called *obligatory provisions*, i.e. the provisions that determine the rights and obligations of the contracting parties to the CLA. These can be express provisions (such as the obligation to cooperate in the creation of a specific social institution), or implied terms. It is generally accepted in Belgium that there are at least two types of implied obligations for the contracting parties: a relative peacekeeping duty, and a duty to exercise influence. The relative peacekeeping duty essentially means that the parties can not undertake actions to modify the content of the CLA during the validity of the CLA. The duty to exercise influence obliges the contracting parties to use the influence they have vis-à-vis their members to convince them to respect the provisions of the CLA.

Aside from obligatory provisions, there are the normative provisions, i.e. the provisions that establish the individual and collective relations between employers and employees in enterprises or economic sectors. Within the normative provisions, a distinction is made between the individual normative provisions and collective normative provisions. The first are the provisions that regard the individual relation between the employer and the employee, such as the wages, function classification, working time, ... The latter are provisions that have to do with the collective labour relations at the level of the enterprise or at the sectional level, such as provisions regarding the trade union representatives at the firm level.

The normative provisions of any CLA in the sense of the CLA-Statute apply to employers bound by the CLA and all their employees, regardless of whether or not they are member of a trade union.

Employers bound by the CLA, are the employers who are either party to the agreement or have acceded to it, or are member of an employer organisation that has signed the agreement or has acceded to it.<sup>32</sup> Moreover, the individual normative provisions of a CLA that has been concluded within the National Labour Council or a joint industrial committee, are supplementary applicable to all employers that are within the jurisdiction of the NLC or the JIC.<sup>33</sup> The binding force can be extended by Royal Decree, in which case all – i.e. the individual and the collective – normative provisions of the CLA imperatively apply to all

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<sup>29</sup> Art. 24 CLA-Statute.

<sup>30</sup> Art. 24 CLA-Statute, as amended, *juncto* art. 5bis NLC-Statute.

<sup>31</sup> See Wetsontwerp houdende diverse bepalingen, *Parl.St.* Kamer 2009-2010, nr. 52-2299/001, 66.

<sup>32</sup> CLA-Statute, art. 19.

<sup>33</sup> CLA-Statute, art. 26.

employers within the jurisdiction of the NLC or the JIC, and all of their employees.<sup>34</sup> Thus, the CLA-Statute conceives the CLA as a contract with regulatory effects.<sup>35</sup>

Given this concise overview, one should be able to comprehend the meaning of the hierarchy between various CLAs embodied in article 51 of the CLA-Statute. This provision holds that the following hierarchy of norms exists between the normative provisions of various CLAs:

The CLAs that are declared universally applicable by Royal Decree, in the following order:

- CLAs closed in the NLC;
- CLAs closed in the JIC

CLAs that are not declared universally applicable, provided that the employer has signed the CLA, or is affiliated to an organisation that has signed it, in the following order:

- CLA closed in NLC;
- CLA closed in JIC;
- CLA closed outside a joint body (typically at level of the enterprise)

The CLA closed in a joint body that is not declared universally applicable, when the employer, although he has not signed the CLA or is not affiliated to an organisation that has signed it, belongs to the resort of the joint body in which the CLA is closed.

### ***Rules that regulate the relationship between the different employee organizations***

Generally speaking, the main trade unions are not in a position to issue rules that regulate the relationship between the different employee organisations, such as their mutual competition for members. This is to a large extent due to the fact that the power relations between the various unions are not in the first place determined by the unions themselves, but rather by the workforce, in the course of the four yearly social elections.

Every four years there are social elections in the Belgian enterprises. The main unions submit candidates and the workers of the enterprise elect their representatives in the enterprise council and/or the committee on prevention and protection at work. The results of these elections are considered to reflect the power relations between the three main unions.

For instance, it is not for the main unions to determine which employee organisations are eligible to participate in a JIC. The CLA-Statute provides that organisations are asked by a message in the *Belgisch Staatsblad/Moniteur Belge* (State Gazette) to inform the competent Minister as to whether they want to be part of a certain JIC, and to prove their representativeness. It is then for the Minister to decide which organizations can represent the employees of a certain sector, and how many mandates any organisation receives within the JIC.<sup>36</sup> The decision of the minister is not merely political. In principle, the assignment of the mandates for the various organisations is determined based on the

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<sup>34</sup> CLA-Statute, art. 31.

<sup>35</sup> Ontwerp van wet betreffende de collectieve arbeidsovereenkomsten en de paritaire comités, (1966-67) Parl. St. Senaat, nr. 148, in particular 88 and 89 (advise of the Council of State). Also see *i.a.* Arbitragehof nr. 37/1993, 19 mei 1993 <http://www.arbitrage.be> (in particular B.7.1); R.v.St. nr. 53.714, 14 juni 1995, ((4 juni 2003)) <http://www.raadvst-consetat.be/>.

<sup>36</sup> Art. 42 CLA-Statute.

results of the most recent social elections for the enterprise council and the committee on prevention and protection at work, on the trade unions strength within the sector, or on an agreement between the concerned employee organisations.<sup>37</sup>

Another illustration is useful to fully understand the remainder of the answers to this questionnaire: the trade union representatives at the firm level<sup>38</sup>, who are competent to negotiate, but not to conclude the CLAs,<sup>39</sup> are also to a certain extent determined by the aforementioned social elections, rather than by a simple ruling of one or more of the main trade unions. Trade union representatives are instituted at the level of the enterprise when one or more employee organisations ask the employer to do so. Which employee organisations may submit candidates? Any organization that is a member of the JIC that is competent for the enterprise of the employer. What if an organization is not a member of the JIC? In that case, it can still submit candidates if it proves to be representative. How may it prove this? It is supposed to be representative when it has obtained at least one mandate in the course of the latest social elections for the committee on the prevention and protection at work.<sup>40</sup>

### ***Competition between employee organisations***

- 1.2 From the answer to question 1.1, it follows that indeed there is a certain competition between employee organisations, specifically between employee organisations that do not belong to the same main union. This competition centres around the four yearly social elections for the enterprise council and the committee on the prevention and protection at work at the level of the enterprises.

### ***Anti-competitive agreements (“demarcation agreements”)***

- 1.3 No, this is not common. It would not be useful to do so, given the freedom of association, the binding force of the CLAs on the one hand, and the nature and consequences of the social elections on the other hand.

### ***Rules for resolving demarcation disputes***

- 1.4 Since there are no demarcation disputes, there are no specific rules on how to solve them.

### ***Employee organisations favoured by law***

- 1.5 Yes there are. As explained when answering question 1.1, the employee organisations that are considered to be legally representative, enjoy a lot of privileges. Even to such an extent that the creation of new unions is discouraged. This is a conscious choice of the Belgian legislator. The goal is to ascertain a certain stability in the collective labour relations. The desired stability is harder to accomplish in an environment of ever changing social partners/employee organisations.

### ***Employee organisation favoured by law: compensations for other organisations***

- 1.6 In principle,<sup>41</sup> there is no compensation for employee organizations that are not officially representative.

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<sup>37</sup> See P. HUMBLET en M. RIGAUX, *Synopsis van het Belgische arbeidsrecht*, Antwerpen, Intersentia, 2009, 4<sup>e</sup> ed., 367.

<sup>38</sup> The framework regulation on the trade union representatives at the level of the enterprise is NLC-CLA nr. 5, available on <http://www.nar-cnt.be>.

<sup>39</sup> Art. 11, 2° of NLC-CLA nr. 5.

<sup>40</sup> Art. 7 of NLC-CLA nr. 5.

<sup>41</sup> One exception is mentioned in footnote nr. 25.

## 2. The conclusions of competing collective agreements

- 2.1 Are employers bound by demarcation agreements between two employee organisations when entering into a collective agreement?

Since there are to my knowledge no such agreements, this question is not relevant for the Belgian system.

- 2.2 Can employers who are covered by collective agreements with employee organisations (agreement1) enter into an agreement with another employee organisation (agreement2) that wholly or partly covers the area covered by agreement1?

Yes they can, but there isn't much point to it for the employers.

- 2.3 Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or an employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

Yes, if the employee organization is not bound by a peacekeeping duty.

As mentioned under question 1.1, a relative peacekeeping duty is implied in any CLA. This relative peacekeeping duty does not forbid any industrial action during the validity of a CLA. E.g. a relative peacekeeping duty does not prevent industrial action:

- during a conflict on matters that do not relate to the content of the CLA;
- when the other party refuses to live by the CLA;
- when the industrial action is a solidarity action that does not aspire to modify the CLA.

Besides the relative peacekeeping duty, an employee organisation may also be bound by an absolute peacekeeping duty. This is only so if it is expressly stipulated in a CLA to which the organisation is a party. If this is the case, then the employee organisation can in principle not use industrial action during the validity of the absolute peacekeeping duty.

This does not however prevent the employees themselves to use industrial action.

*If the answer two question 2.3 is yes:*

- 2.4 Is the scope for an employee organisation to use industrial action affected if the employer is already covered by an agreement with another employee organisation that wholly or partly covers the area that is covered by the agreement that the organisation wishes to conclude with the employer?

The answer to this question is no, since an employee organisation is in no way legally bound by peacekeeping duties that rest on other employees organisations' following the CLAs they have concluded.

- 2.5 Does it make a difference if the competing employee organisations are members of the same main organisation?

In principle no. However, internal rules of the main association may provide otherwise and given the structure of the unions in Belgium (see question 1.1), it is highly unlikely for two competing employee organisations to be member of the same main organization.

- 2.6 Suppose an employer joins an employer organisation that has concluded a collective agreement with an employee organisation.

- 2.6.1 Is the employer automatically covered by that collective agreement upon membership of the employer organisation?

Yes, following article 19, 3°, of the CLA-Statute.

- 2.6.2 Does it make a difference if the employer already has a collective agreement with the employee organisation?

No. The question which CLAs provisions will apply will be determined by the hierarchy between the CLAs, described in the answer to question 1.1.

For a good comprehension of the hierarchy, it is important to point out that the hierarchy does not necessarily implies that the lower norm should not be applied. Which provision should be applied depends on the nature of the higher norm: is it a fixed norm, a minimum standard, or a maximum standard?

E.g. Say an employer has concluded a CLA at the level of his enterprise providing for a monthly wage of € 3000 for a certain category of workers. Upon becoming a member of an employer organisation that is member of the JIC which is competent for the employer, the CLAs concluded within the JIC become binding for this employer. Say there is a sectional CLA that provides a minimum wage for the concerned category of workers of € 2500. The employer will still have to pay the € 3000 wage.

- 2.6.3 Does it make a difference if the employer already has a collective agreement with a different employee organisation?

No, it doesn't make any difference.

3. **Employer's use of competing agreements:** an employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or,
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or,
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

This question is answered under questions 1.1 and 2.6.2: the employer can't choose. He will have to pay the same remuneration rate to all his employees. The question which remuneration rate will have to be paid, is principally solved by the hierarchy between the CLAs.

It follows that there is no general acceptance of the so called *Gunstigkeitsprinzip* in the Belgian legal system. However, if the question which remuneration rate to apply can not be solved by the hierarchy of norms, then in principle, the most advantageous remuneration rate would prevail.

Note that even when the question can be solved through the hierarchy of norms, usually the highest remuneration rate will have to be paid, since, usually, remuneration rates are minimum standards, and not fixed norms or maximum standards.

4. **Can an employer leave an employers' organisation and transfer to another one?** If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

Yes, an employer can leave an employers' organisation and transfer to another one. The conditions for leaving an employer's organisation are determined by the rules of the organisation.

As far as the CLAs that were signed by the original employers' organisation are concerned: the employer will stay bound by them until they are changed in such a way that the resulting obligations have substantially changed.<sup>42</sup>

As far as the CLAs that the employer has signed himself when he was a member, the general rules that are applicable to CLAs signed by the employer will be applied: the agreement is concluded for a fixed time, indefinitely or for certain time with renewal clause; except when otherwise agreed in the contract, each party may unilaterally end the contract for an indefinite period or for certain time with renewal clause; partial withdrawal is possible only if the agreement expressly stipulates it; termination shall be made, on pain of nullity, in writing.<sup>43</sup> The parties to the CLA have to determine the modalities of the termination.<sup>44</sup>

## Case

Given the non-existence of disputes on demarcation agreements in the Belgian system, it is not useful to comment on the case.

## Denmark

National reporter: Judge Niels Waage, Justice, Municipal Court

### 1. Competing employee organizations

*The organization of employees' representation, main trade unions*

*1.1 Please give a brief description of how employees' representation is organized in your country. Are there one or more supra-organizations (main trade unions) comprising a number of employee organizations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organizations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organization) with an employer or employer organization? Is the main union in a position to issue rules that regulate the relationship between the different employee organizations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?*

In Denmark there are a number of main organizations that have a larger number of unions, respectively, employers' organizations or individual employers as members. However, there are also a number of trade unions and employers' organizations and employers which are not members of a main organization.

There are three employee's main organizations in Denmark. The "Landsorganisationen i Danmark" "Danish Confederation of Trade Unions" has 18 affiliated nation-wide federations with 1, 1 million members. The LO-federations have traditionally represented blue-collar workers employed in manufacturing industries, but now a significant number of members work in various services. The FTF Confederation of Professionals in Denmark FTF is the trade union confederation for 450,000 public and private employees. FTF has approximately 81 affiliated organizations. The five largest calculated by number of members are: The Danish Union of Teachers (Danmarks Lærereforening), The Danish Nurses Organization (Dansk Sygeplejeråd), The Danish National Federation of Early Childhood Teachers and Youth Educators (BUPL) the Financial Services Union (Finansforbundet), Danish Association of Social Workers (Dansk Socialrådgiverforening). The Danish Confederation of Professional Associations (AC) is an umbrella organisation for 23 member organizations representing around 210.000 members.

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<sup>42</sup> Art. 21 CLA-Statute.

<sup>43</sup> Art. 15 CLA-Statute.

<sup>44</sup> Art. 16, 5° CLA-Statute.

The central organizations usually do not conclude collective agreements, except for so called general agreements, which cover issues like employment protection or the shop steward system.

Apart from that all questions can be answered with "Yes".

### **Competition between employee organizations**

1.2. *Is the relationship between the employee organizations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organizations that belong to the same main union; (iii) any competition between employee organizations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.*

Answer to all questions: Yes

### **Anti-competitive agreements ("demarcation agreements")**

1.3. *Is it common for potentially competing employee organizations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organizations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?*

Yes.

### **Rules for resolving demarcation disputes**

1.4. *Are there any rules governing how demarcation disputes between the individual employee organizations are solved? If yes, please describe these rules.*

Yes, e. g. in the regulations of the LO ("Danish Confederation of Trade Unions") and in the rules of procedure of the comity of demarcations of the confederation.

### **Employee organizations favoured by law**

1.5. *Are there any employee organizations in your country that by law or other public regulation are given preferential treatment compared to other employee organizations in one or more areas?*

Yes, according to the Danish Statute Act of the Labour Court only the 3 main organizations mentioned in answer 1.1. (together with a 4. Organization) are entitled to recommend candidates as judges in the labour court representing employees (a recommendation which is always followed by the minister of occupation, who appoints judges of the Labour court).

1.6. *Do the employee organizations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organizations, receive any kind of compensation in this respect?*

Yes, if such an employee organisation is party in a Labor court dispute, it has the right to have the case dealt with without the normal participation of judges representing the employee and employer side (e. g. the professional judge of the court alone).

### **The conclusion of competing collective agreements**

2.1. *Are employers bound by demarcation agreements between two employee organizations? (See question 1.2) when entering into a collective agreement?*

No.

2.2. *Can employers who are covered by collective agreements with employee organizations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?*

Yes, unless he has renounced that right in agreement 1.

2.3. *Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?*

Yes

*If the answer to question 2.3 is yes:*

2.4. *Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?*

Yes, the right to use industrial action will be limited in that case.

2.5. *Does it make any difference with regard to the response to question 2.4, if the competing employee organizations are members of the same main organisation? See question 1.1..*

Yes, in such a case, the right to use industrial action will be very limited.

2.6. *An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).*

2.6.1. *Is the employer automatically covered by O1 upon membership of the employer organisation?*

Yes, as the point of departure

2.6.2. *Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?*

No, in principle both of the two collective agreements are in force.

2.6.3. *Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?*

No, but the employer may by joining the employers' organization be obliged to free himself from the first agreement according to the rules and regulations of the employers' organization.

#### ***Employer's use of competing agreements***

*An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.*

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or*
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or*
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?*

The answer is c) as the point of departure, but circumstances may lead to result b).

#### ***4. Can an employer leave an employers' organization and transfer to another one?***

*If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organization has signed when he or she was a member?*

Yes, but the employer must comply with the rules and regulations of the organization from which he withdraws, e.g. term of notice. The biggest Danish employers' organization has a term of notice of 6 months.

The employer cannot free himself from a collective agreement just by leaving the employers' organization. If the employer has signed the collective agreement himself, he must bring the

collective agreement to an end according to the conditions for termination of the collective agreement. First of all he has to comply with the term of notice of the collective agreement (normally a collective agreement has duration of 2 or 3 years). If the collective agreement is signed by the organization the employer will still be bound by the collective agreement at any rate as long as the collective agreement is not replaced by a new one. The practice of the Labour Court is not quite clear upon that point, so maybe the employer must also bring the collective agreement to an end himself as if he had signed the collective agreement himself. (Jens Christiansen, s. 313).

## Case

*Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.*

*A demarcation agreement has been concluded between the employee organizations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.*

*For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.*

*Is A's strike notice legal?*

*Does it make any difference if A and S are members of the same main organisation?*

The case is inspired from a Danish Labour Court case from 1976. The Labour Court ruled that the strike notice was not legal with the following grounds (here simplified):

B has for 6 years used the agreement between B and the employee organization S for all work performed at B without any objections from A. Therefore there is a presumption that the work is covered by this agreement

According to the demarcation agreement, it may be assumed that the work done at B belongs to A's area of interest.

However, since the agreements between trade unions do not bind employers, B is entitled to assume that all work at the company is covered by the existing agreement. Therefore, and since A and S both are members of Danish Confederation of Trade Unions (LO), it cannot be justified that the A during the period of a collective agreement by threat of a strike seeks to obtain a collective agreement with B.

## Finland

National reporter: Jorma Saloheimo, President of the Labour Court

### 1. Competing employee organisations

#### ***The organisation of employees' representation, main trade unions***

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

There are three employee's central organisations in Finland. The Central Organization of Finnish Trade Unions SAK has 20 affiliated nation-wide federations. The SAK federations have traditionally represented blue-collar workers employed in manufacturing industries, but to date a significant number of members work in various services. The Finnish Confederation of Professionals STTK has 18 affiliated trade unions with white-collar workers as their members. Akava, the Confederation of Unions for Professional and Managerial Staff in Finland, is a trade union confederation for those with university, professional or other high-level education. Akava has 35 national member associations.

The central organisations usually do not conclude collective agreements, except for so called general agreements, which cover issues like employment protection or the shop steward system. Neither do the central organisations regulate the mutual relationships of the national federations or their right to conclude collective agreements.

### ***Competition between employee organisations***

- 1.2 Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

Competition between employee organisations is not a very common phenomenon in Finland, at least in the sense that two or more organisations, representing employees working in the same industry, would contend for the right to conclude a collective agreement with the employer side. Usually there is only one collective agreement, applicable to the whole industry in question, and all employees are members of the same trade union. The scope of application of the agreement is determined by the nature of the activity of the employer (metal industry, construction etc.) and the association to which the employer has affiliated. It is another thing that from time to time disagreement arises as to which is the "right" collective agreement that the employer should follow.

Even within the same industry, the electric workers are organised separately and have their own collective agreement. This may lead to competition for instance between the Metal Workers' Federation and the Electric Workers' Federation in a metal industry enterprise, which is bound by collective agreements concluded with both federations (situation (ii) above).

Also concerning many groups of white-collar workers, the basis of organisation and the field of application of the collective agreement is the craft or education of the employees. This too may lead to competition between trade unions. A common source of disagreement is the borderline between collective agreements made for professionals represented by a trade union belonging to STTK, and employees in higher expert positions, who are members of an Akava-affiliated trade union (situation (iii) above).

### ***Anti-competitive agreements ("demarcation agreements")***

- 1.3 Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

It is rather common that collective agreements contain clauses, which define the sphere of application of the agreement in relation to another agreement, which is a potential rival. The criteria thus designed are inevitable more or less open to interpretation. Therefore more accurate criteria are sometimes agreed upon at enterprise level.

In both cases it is not for the trade unions alone to decide on the borderline question, but this requires the contribution of the employer, too. Sometimes a trade union (A) has managed, maybe with the aid of a threat of industrial action, to agree on the question with the employer. This is, of course, frustrating for the rivalling trade union (B), members of which may have been transferred to be governed by another collective agreement, made with trade union A. Right now the Labour Court is treating a case with such a constellation.

### ***Rules for resolving demarcation disputes***

- 1.4 Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

As explained above, the conflict often takes the form of a dispute concerning the applicability of two rivalling collective agreements. This is a normal question of interpretation of the agreements and can be resolved by the Labour Court.

In addition, a special voluntary conciliation body and procedure for resolving demarcation problems has been in place for some years. The system was established by all central labour market organisations except the STTK. The body is intended to monitor developments in the economy and mergers and other changes in the structures of organisations, so as to foresee and prevent demarcation disputes. For resolving such disputes the body provides conciliation services. So far, only a few disputes have been treated within the procedure and not with a very good success.

### ***Employee organisations favoured by law***

- 1.5 Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

No.

- 1.6 Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect? -

## **2. The conclusion of competing collective agreements**

- 2.1 Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

As explained, the employer side is normally party to such agreements and consequently bound by them.

- 2.2 Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

Yes, there is no obstacle to that. However, agreement 2 cannot replace agreement 1 until after the term of the first agreement has elapsed.

- 2.3 Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

Yes, this is the basic right of a trade union.

*If the answer to question 2.3 is yes:*

- 2.4 Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the

employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

No (unlike in the case of Sweden, for instance). But again, such action would be more or less futile, because a new agreement could not legally replace an earlier agreement, binding upon the employer. This is the so called time priority rule, which is applied to resolve conflicts between overlapping collective agreements.

- 2.5. Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

No.

- 2.6 An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

2.6.1 Is the employer automatically covered by O1 upon membership of the employer organisation? – Yes.

2.6.2 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

So here we have two coinciding agreements, both made with A1. The normal course of events would be that the first (local) agreement with A1 would contain only a reference to the second (federal) agreement. As a result, there is no conflict between the two agreements, and both can be applied. This is also the case if one of the agreement contains rules on issues which the other does not.

Only on those points, where the two agreements are in conflict, will the first contract take precedence over the second one in accordance with the time priority rule. For instance, if the first agreement contains provisions on higher pay, those provisions remain binding on the employer.

2.6.3 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

If the two agreements regulate the same work, but the terms and conditions are different – as would normally be the case - the earlier agreement remains applicable until the end of the contract period (time priority).

### **3. Employer's use of competing agreements**

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees,

No, the choice of pay rate must be based on objective criteria.

- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2,

This has been possible only in those cases where the agreement contains a so called "organisation clause", i.e. a provision stating that the application of the agreement is confined to members of the association which is party to the agreement. Thus, in 2007

two collective agreements were concluded for nurses and other professionals, who work in municipal hospitals and are affiliated to two federations. Both agreements contained an "organisation clause". The second agreement, which was made after a threat of mass resignation of nurses, provided for higher remuneration for member employees. Afterwards the validity of those provisions has been contested by the other federation, which invokes the rules of mandatory law on equal treatment of workers performing the same work in the same work place. Court cases on the matter are pending.

- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

According to the time priority rule, contained in the Collective Agreements Act, the earlier agreement prevails regardless of the level of the terms of employment it provides. Only by virtue of "organisation clauses" can two agreements, regulating the same work, become applicable in the first place. But in these cases the equal treatment rule, contained in the Constitution and several other statutes, seems to require the most advantageous treatment to be applied to all.

#### **4. Can an employer leave an employers' organisation and transfer to another one?**

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

Yes, an employer can resign an employers' organisation and transfer to another one. This also happens in practice for instance when an employer considers that the nature of the activity of the firm has changed so that another association and another agreement are more suitable for the firm. There are also some competing employer associations in the same field of industry.

Despite the transfer, however, the employer remains to be bound by the previous collective agreement until the end of its term. Whether the agreement has been signed by the employer himself or his association, is irrelevant.

#### **Case**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

Does it make any difference if A and S are members of the same main organisation?

A's strike notice is legal as such. If there is no collective agreement binding organisation A in its relation to company B and providing for a peace obligation, A can take strike action against B. But as explained above (2.4), A cannot reach a collective agreement with B, which could legally replace the agreement that binds B in its relation to organisation S, as long as the latter agreement is in force.

A demarcation agreement between A and S would be irrelevant here, and so would the membership of A and S in the same parent association.

## France

National reporter: M. le Conseiller Michel Blatman, Membre de la Chambre sociale, Cour de cassation

### 1. Competing employee organisations

#### *The organisation of employees' representation, main trade unions*

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

In France, all unions may set up in a firm, provided that they at least have two years length and that their statutes cover geographically and professionally the company. The unions may then designate union representatives in contact with employees. On the other hand, only representative unions may negotiate collective agreements. To be representative an union, since a law of 20 august 2008, must have put forward lists of candidates to the elections of members of workcouncils and obtained 10% of the valid votes ("suffrages exprimés"). To negotiate collective agreements at a higher level, the votes of the unions in the different firms have to be added.

Collective agreements are valid if signed by representative unions making up at least 30% of valid votes in last elections. But they then apply to all employees, would they be unionized or not.

In the companies, there are often 4 or 5 unions present, having union representatives.

#### *Competition between employee organisations*

- 1.2. Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

Local unions affiliated to the same confederation may not exercise separately the same legal prerogatives. If they happen to compete, the judge ("juge d'instance" = a first instance level civil judge) will solve their dispute, having regard to :

- a) whether a possible arbitration by the confederation
- b) whether the provisions of statutes or, want of these, by validating the act which is chronologically prior.

### ***Anti-competitive agreements (“demarcation agreements”)***

- 1.3. Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members (“demarcation agreements”)?

There is no competition between elected representatives and union representatives, each one having its own assignment. But mandates may be held at the same time..

### ***Rules for resolving demarcation disputes***

- 1.4. Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

There shall not exist agreements between unions in order to apportion “offices” in the company : any union that fulfils legal conditions is allowed to establish.

### ***Employee organisations favoured by law***

- 1.5. Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

The law distinguishes between representative and non-representative unions. But all representative unions must have the same rights and the same prerogatives.

- 1.6. Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

No particular domain or field is reserved to some unions.

## **2. The conclusion of competing collective agreements**

- 2.1. Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

Groundless question, according to our organisation

- 2.2. Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

The firm is covered by the collective agreements signed at the level of the branch to which it belongs according to its main activity. There can't be competition between same level agreements. On the other hand, there is a sort of hierarchy between company agreements, branch agreements and national interprofessional agreements.

- 2.3. Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

Strike may serve collective interests. Therefore, this defence may aim to obtain the signing of collective agreements granting further rights.

*If the answer to question 2.3 is yes:*

- 2.4. Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

No ground for this question. An employer who joins an employer organisation is automatically covered

- 2.5. Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

See answer 1.2

- 2.6. An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

An employer who joins an employer organisation is automatically covered by the collective agreements this organisation has signed

- 2.6.1. Is the employer automatically covered by O1 upon membership of the employer organisation?

- 2.6.2. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

- 2.6.3. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

### 3. Employer's use of competing agreements

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

No ground for this question.

### 4. Can an employer leave an employers' organisation and transfer to another one?

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

An employer may release him/herself from the application of a collective agreement if he/she disaffiliates from the signatory organisation. This can be done as long as this agreement has not been extended by a ministerial order ("arrêté d'extension") to all the companies covered by its field of application. In that latter case, indeed, the agreement applies to all the firms of the sector, no matter the employer has signed it or not.

### Case

No object.

National reporter: Judge Mario Eylert, Federal Labour Court of Germany

### 1. Competing employee organisations

*The organisation of employees' representation, main trade unions*

1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

*Answer:*

- a) In Germany employees are represented at company and plant level by works councils and for example representatives on the supervisory board (Arbeitnehmervertreter in Aufsichtsräten) and by **trade unions**.
- b) Most of the German trade unions belong to one of three umbrella organisations, the German Trade Union Association (Deutscher Gewerkschaftsbund, DGB), the German Civil Servants' Association (Beamtenbund und Tarifunion dbb) and Christian Trade Union Federation (CGB). The most important one with the largest number of members is the DGB. Furthermore there are also a number of trade unions which are not affiliated to an umbrella organization and by which often specific personal groups are organized (for example Marburger Bund - Verband der angestellten und beamteten Ärzte in Deutschland; Vereinigung Cockpit e.V., die Berufsorganisation des Cockpitpersonals in Deutschland). Pursuant to section 11 (2 number 4) Labour Court Act (ArbGG) umbrella organizations are allowed to represent their affiliated unions and the members thereof in court proceedings.
- c) Section 2 (2) Collective Bargaining Agreements Act (Tarifvertragsgesetz - TVG) stipulates that main trade unions (Spitzenorganisationen) are allowed to conclude collective agreements for their member unions if they are authorized by them.  
*[Section 2 (2) TVG: Federations of trade unions and of employers' associations (central organizations) may conclude collective bargaining agreements on behalf of their affiliates if empowered to do so.]*  
The DGB, however, is not involved in collective bargaining directly with employers and employers' associations.
- d) Yes. In their rules of association the main union can issue such rules (procedure); cf. the DGB rules of association (Section 15 and annex 1).

*Competition between employee organisations*

1.2 Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union,

or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

*Answer:*

- In my view, there is hardly any real competition between German main unions, since the DGB is by far the largest main union.
- In principle, competition between trade unions in the DGB are ruled out, because every sector of industry is defined as the area of one union. Due to industrial change, however, the demarcations between the different sectors have become blurred, and therefore competition between unions has increased.
- 3. In this constellation, competition is most likely, if an independent trade union exists, which represents a specific professional group ("Spartengewerkschaft"), that also is represented by a union affiliated to the DGB.
- Elected workers' representatives (works council, Betriebsrat) work on a different level from the unions. Therefore competition between both is not possible, though they may of course have conflicting interests.

*Anti-competitive agreements ("demarcation agreements")*

- 1.3 Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

*Answer:*

In principle the rules of association of the individual unions determine autonomously their respective areas of responsibility. They determine the territorial, operational and personal scope of concluding collective agreements. The employee organisations are free to change the areas of responsibility, even in case of potentially competing unions. The unions affiliated to the DGB do, however, coordinate their collective-bargaining competence to avoid pertaining conflicts. However overlapping of responsibilities can not always be avoided.

*Rules for resolving demarcation disputes*

- 1.4 Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

*Answer:*

The DGB as the largest main union sets rules for arbitration proceedings in their rules of association (Satzung). If there are conflicting views in two trade unions affiliated with the DGB about their areas of responsibility, they first must try to resolve the conflict on their own. If they do not reach an agreement, they have to inform the board of the DGB about the result and to invoke a dispute settlement procedure (Schlichtungsverfahren), which is regulated in the rules of association of the DGB (Section 16 of the rules of association of the DGB).

*Employee organisations favoured by law*

- 1.5 Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

*Answer:*

No.

- 1.6 Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

*Answer:*

See the answer to question 1.6

## **2. The conclusion of competing collective agreements**

- 2.1 Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

*Answer:*

No. If collective-bargaining competence exists the employer is free to decide with which employee organisation to conclude a collective agreement. The demarcation agreements are internal regulations without binding effect for the employer.

- 2.2 Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

*Answer:*

In principle yes. But the existence of multiple collective bargaining agreements (Tarifpluralität) may result in possibly competing bargaining agreements (Tarifkonkurrenz) (see question 2.6.2).

- 2.3 Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

*Answer:*

Yes.

*If the answer to question 2.3 is yes:*

- 2.4 Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

*Answer:*

In principle no. It is permitted to enter into strike for collective agreements, even if they will be replaced by existing agreements on the principle of competing bargaining agreements.

- 2.5 Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

*Answer:*

It depends on whether or not the rules of association of the main union include arbitration procedures for settling disputes over areas of interest between member unions. This is the case with the DGB. Its procedures are decisive for any member union and supplement the latter's own rules of association. The decisions made by the arbitration board of the DGB are binding for the involved unions as well as for the respective employer. After the arbitration procedures are completed and one union is granted the formerly contested

responsibility, only this union is permitted to enter into strike against the employer in order to conclude a collective agreement.

2.6 An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

2.6.1 Is the employer automatically covered by O1 upon membership of the employer organisation?

*Answer:*

Yes, the employer is in principle covered by O1 ("Tarifgebundenheit"). It is, however, possible to become a member of an employer organisation without full commitment to the collective bargaining agreement O1 ("OT-Mitgliedschaft").

2.6.2 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

*Answer:*

No. The binding effect of an earlier collective agreement between the employer and A1 is not affected by joining an employer organisation also having concluded an agreement with A1. In case of competing bargaining agreements, the valid agreement is established by particular conflict rule (rule of "Lex specialis derogat legi generali").

2.6.3 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

*Answer:*

No. Any employer is entitled to conclude collective agreements with different unions at the same time. In 2010, the BAG has changed its jurisdiction and given up the principle of one collective bargaining agreement per business (BAG 7. Juli 2010 - 4 AZR 549/08 -, BAGE 135, 80).

### **3. Employer's use of competing agreements**

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) should he pay the members of A1 according to O1 and the members of A2 according to O2, or
- c) should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

*Answers:*

- a) The employer has no free choice according to which agreement he remunerates his employees.
- b) If the employees are bound to one collective agreement by virtue of membership in their respective unions, the members of A1 are paid according to O1 and the members of A2 according to O2.

- c) It is however possible that the individual employment agreement of an employee, who is a member of A1, nevertheless refers to O2 ("arbeitsvertragliche Bezugnahmeklausel"). In this case O2 is applied if it is more advantageous than O1. Otherwise O1 is valid.

#### **4. Can an employer leave an employers' organisation and transfer to another one?**

*Answer:*

Yes.

- a) If yes, under what conditions?

*Answer:*

The employer may end his membership in an employer's organisation by leaving it. He has to observe the stipulated period of notice. Another option is termination of membership by agreement with the organisation. As an exception, membership can also be ended by extraordinary termination. In all these cases, the employer is free to join another employer's organisation.

- b) Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement?

- aa) One that he or she has signed

*Answer:*

The employer can terminate a collective agreement between himself and an employee's organisation ("Haustarifvertrag"), provided he observes the period of notice. Both can also agree on cancellation of the collective agreement. As an exception, the employer can also terminate the collective agreement extraordinarily. The rules of this collective agreement do, however, remain valid, as long as they are not superseded by other, collective, individual or works agreements (works agreements = "Betriebsvereinbarungen").

- bb) one that his or her employers' organisation has signed when he or she was a member?

*Answer:*

If an employer intends to free himself from a collective agreement between the employers' organisation that he is a member of and a union, he can, in principle, either leave the employer organisation completely or change his status into an "OT"-membership, meaning a membership without binding effects from the collective agreement in question. However, in both cases, the binding effects of this agreement, however, remain in force until the end of the collective agreement (e.g. via termination by one of the parties to the collective agreement). This provision should prevent an employer from freeing himself unilaterally from the obligations of the collective agreement.

#### **Case**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

Does it make any difference if A and S are members of the same main organisation?

*Answer:*

The fact that union A has not protested against the application of the collective agreement contracted with S, does not impair the right of A to try to reach a collective agreement with B.

a) The notice of strike by A is permitted, because A and B share (have) a common area of interest ("Tarifzuständigkeit"). The fact that A and S have contracted a demarcation agreement does not prevent A from negotiating with B and noticing a strike against B.

b) It might make a difference if A and S are members of the same main organisation, whose rules of association provide a procedure to settle disputes over areas of interest ("Tarifzuständigkeit"), like e.g. the DGB in Germany. If A and S are members of the DGB, they have to make use of the DGB's arbitration procedure, in which a decision is made whether A or S is responsible for the area of interest in question. Only if A is deemed responsible, it may notice a strike against B.

## Hungary

National reporter: Dr. Mercédesz Kádár, Labour Court of Budapest

### 1. Competing employee organisations

*The organisation of employees' representation, main trade unions*

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

**With a view to protecting the social and economic interests of workers and to maintaining peace in labor relations, the Labor Code governs the relations between trade unions, works councils and employers, and their interest representation organizations. Accordingly, it shall guarantee the freedom of organization and the employees' participation in the formation of working conditions, furthermore, it shall regulate collective bargaining negotiations, as well as the procedures for the prevention and settlement of employment-related conflicts. Interest representation organizations shall be entitled to establish associations or to join such, including international federations as well. Employees shall be entitled to set up trade unions at their place of employment. Trade unions shall be entitled to set up organs at the employers, and to involve their members in the operation of such. 'Trade union' shall mean all organizations of workers whose primary function is the enhancement and protection of employees' interests related to their employment relationship; 'local trade union branch represented at the employer' shall mean a trade union which, according to its statutes, operates an organization authorized for representation or has an officer at the employer. Employers may not demand that employees disclose their trade union affiliation. Employment of an employee may not be rendered contingent upon his membership in any trade union, on whether or not the employee terminates his previous trade union membership, or on whether or not he agrees to join a trade union of the employer's choice. The employment relationship of an employee shall not be terminated, and the employee shall not be discriminated against or mistreated by the**

employee in any other way on the grounds of trade union affiliation or trade union activity. Any entitlement or benefit may not be rendered contingent upon affiliation or lack of affiliation to a trade union.

Trade unions shall be entitled to conclude collective agreements in accordance with the regulations set out in the Labor Code. Trade unions shall have the right to provide information to workers relating to industrial relations or employment relationships. The prior consent of the higher ranking trade union body is required for terminating the employment relationship by notice of an employee designated as serving as an elected trade union official.

Yes, we have more supra-organisations, but they are not able to represent they memebers (trade unions, other employees' organisations) for example court proceedings, because trade unions have own legal personality.

Collective agreements may be concluded:

*a)* by employers, and by employers interest groups by authorization of their members; and

*b)* trade unions or trade-union confederations.

A trade union shall be entitled to conclude a collective agreement if its membership of workers at the employer reaches ten per cent:

*a)* of all workers employed by the employer;

*b)* of the number of workers covered by the collective agreement concluded by the employers interest group.

#### *Competition between employee organisations*

- 1.2 Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

**It can be competition among them, but usually they has cooperation agreement. (i.) The competition can be between two trade union (for example Trade union of Teachers and Democrative Trade Union of Teachers)**

**(ii.) Yes it can be, if it is not precluded by the main union rules of procedure.**

**(iii.) That is more general.**

**(iv.) It is not general. Works councils shall remain unbiased in relation to a strike organized against employers, and they may not organize, support or obstruct strikes. The mandate of works council members participating in a strike shall be suspended for the duration of the strike.**

#### *Anti-competitive agreements ("demarcation agreements")*

- 1.3 Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

**Trade unions are organised according to occupational or professional allegiance. They have cooperation agreements, which regulate their work.**

*Rules for resolving demarcation disputes*

- 1.4. Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

**The cooperation agreement was concluded taking into account the sectoral agreement.**

**For example: After long preparation work the Paks Nuclear Power Plant Workers' trade unions – 1. Paks Nuclear Power Plant Workers' Trade Union, 2. Shift Advocacy Organization, 3. Paks Nuclear Power Plant Labour Council – signed a cooperation agreement for effective representation of workers.**

*Employee organisations favoured by law*

- 1.5 Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

**In Hungary we do not have employee organisations favoured by law.**

- 1.6 Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

**See 1.5.**

**2. The conclusion of competing collective agreements**

- 2.1. Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

**It can not be excluded. It is mandatory, that the collective agreement was concluded taking into account the sectoral agreement.**

- 2.2. Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

**An employer may enter into one collective agreement. Where a collective agreement is concluded by more than one employer, an employer may conclude the collective agreement, of which the employer shall also be a party, under authorization given in such collective agreement. Any trade union (trade-union confederation) that meets the requirements after the collective agreement is concluded shall be able to request an amendment of the collective agreement, and to participate in the negotiations relating to the amendment in an advisory capacity.**

- 2.3. Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

**Yes, but it is ruled by the Act VII of 1989 on the Strike Code**

*If the answer to question 2.3 is yes:*

- 2.4. Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

**The trade unions with entitlement to conclude a collective agreement may do collectively. An employer may enter into one collective agreement. See 2.2.**

- 2.5. Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

**It does not make any difference, but it can be influenced by the cooperation agreement between them.**

- 2.6. An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

- 2.6.1. Is the employer automatically covered by O1 upon membership of the employer organisation?

**The effect of a collective agreement shall apply to any employer who:**

**a) is a party to the collective agreement; or**

**b) is a member of the employers interest group that concluded the collective agreement.**

**The effect of the provisions of the collective agreement governing the means of communication of the parties shall apply to the undersigning parties of the collective agreement.**

- 2.6.2. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

**An employer may enter into one collective agreement. See 2.2.**

- 2.6.3. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

**An employer may enter into one collective agreement. See 2.2.**

### **3. Employer's use of competing agreements**

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

**An employer may enter into one collective agreement. See 2.2.**

### **4. Can an employer leave an employers' organisation and transfer to another one?**

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

**It is ruled by the given employers' organisation rules of procedure.**

### **CASE**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that

production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal? **It is illegal.**

Does it make any difference if A and S are members of the same main organisation? **It does not make any difference.**

## Ireland

National reporter: Kevin Duffy, Chairman, The Labour Court

### 1. Competing employee organisations

#### *The organisation of employees' representation, main trade unions*

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

*There is a single trade union centre in Ireland – The Irish Congress of Trade Unions (ICTU). This is the umbrella organisation for all trade unions in both the Republic of Ireland and in Northern Ireland. The ICTU has rules which regulate the relations between its affiliated trade unions and determine the employments and industrial sectors in which its affiliated unions can organise and represent workers. These rules are voluntary in nature and they do not have the force of law. The ICTU has machinery in place under its constitution for resolving disputes between trade unions on these matters. Where a trade union fails to abide by the directions of the ICTU in relation to the recruitment or representation of members it can be expelled from the organisation but is otherwise legally free to continue to operate as a trade union. While there have been occasions on which a union has been disaffiliated in such circumstances they are rare.*

*The ICTU also has a role in coordinating the activity of trade unions in particular sectors and employments. Where there is a multiplicity of trade unions in an employment or sector (for example in the public sector, construction and transport) industrial committees are formed representing the interests of all affected unions. These committees negotiate with relevant employers or their organisations and conclude collective agreements for the sector or employment concerned which apply equally to each of the trade unions in the sector. These committees also determine the broad policy issues in relation to the sectors that they represent. Where negotiations take place with individual employers and where there is a single union representing either the entire workforce or a discrete grade or category of employees, each union is free to conduct its own negotiations and conclude a collective agreement.*

*Up until 2009 the ICTU negotiated with employer organisations and the Government (both as an employer and as Government) on national partnership agreement, which, amongst other things, determined increases in pay for all workers. These arrangements have now been discontinued and collective bargaining is currently conducted at the level of the individual employment or sector.*

### **Competition between employee organisations**

- 1.2 Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

*There are no problems caused by inter-union competition in Ireland. While issues may emerge from time-to-time regarding the recruitment and organisation of workers or one Union may seek to recruit members of another union the ICTU has effective procedures in place to resolve such difficulties. All unions that are affiliated to ICTU are required to accept its decision on such matters.*

### **Anti-competitive agreements ("demarcation agreements")**

- 1.3 Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

*Yes. These are referred to as sphere of influence agreements. Many of these agreements are of long standing and they regulate the industries, or occupations, or in some cases the grades of workers that a particular Union will represent. For example agreements exist in the public service whereby particular grades are solely represented by particular unions. Likewise agreements exist which designate certain unions as appropriate to represent certain craft categories.*

### **Rules for resolving demarcation disputes**

- 1.4 Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

*Please see answer to question 1.2 above. Generally the rules of ICTU prescribe that where a union (or a group of unions) have established negotiating rights in an employment or sector (in what is referred to as an negotiating unit) no other union may seek to organise or represent workers within that employment or sector without the consent of the Union or unions having negotiating rights. The rules provide that where 80% of the workers constituting the negotiating union wish to transfer to another Union, consent to that other union obtaining negotiating rights cannot be withheld.*

### **Employee organisations favoured by law**

- 1.5 Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?
- 1.6 Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

*No. There are no such legal provisions.*

## **2. The conclusion of competing collective agreements**

- 2.1 Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

*Yes. But only under the voluntary code set down by ICTU.*

- 2.2 Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

*The whole area of collective bargaining and the conclusion of collective agreements is not regulated by law in Ireland. In general the conduct of industrial relations and the conclusion of collective agreements are governed by voluntary arrangements.*

*Under well-established custom and practice the type of situation envisaged by this question would not arise*

- 2.3 Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

*Yes.*

*If the answer to question 2.3 is yes:*

- 2.4 Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

*No.*

- 2.5 Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

*From a legal perspective it would make no difference. However, if a dispute of this nature were to arise in Ireland it would be resolved within the rules of ICTU without any form of industrial action.*

- 2.6 An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

- 2.6.1 Is the employer automatically covered by O1 upon membership of the employer organisation?

*Collective agreements in Ireland are either in respect of a particular employment or in respect to a sector. Were sector agreements exist there is provision in Irish law to register them with the Labour Court. The effect of registration is that the agreements apply to all employers in the sector regardless of whether or not they are members of the employer organisation with which the agreement is concluded. Practically all sector agreements are registered and therefore universally applicable within the sector to which they relate.*

- 2.6.2 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

*This would not arise. If it is an employer specific agreement it would make no difference. If a sector agreement exists covering the employment the question of a separate agreement would not arise.*

2.6.3 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

*This would not arise.*

### **3. Employer's use of competing agreements**

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

*This type of situation would not arise within the Irish system.*

### **4. Can an employer leave an employers' organisation and transfer to another one?**

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

*See answer to Q 3 above.*

### **Case**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

Does it make any difference if A and S are members of the same main organisation?

*This raises questions as to the legal protection afforded to the taking of strike or industrial action. The first requirement for a lawful strike is that it be in furtherance of a trade dispute. That is defined as a dispute between workers and employers concerning the terms of employment or the conditions of employment of workers.*

*In so far as the issues postulated in the question involve the terms of employment of the workers, and the right to conclude a collective agreement do relate to conditions of employment, the strike would be lawful. However, in practice a strike in these circumstances could not occur. The dispute between the two unions would be referred to the ICTU and the question would be resolved within its procedures.*

## 1. Competing employee organisations

### *The organisation of employees' representation, main trade unions*

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation?

Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

*Approximately 30% of workers in Israel are organized in unions today, most of them in the General Federation of Labourers in the Land of Israel, known as the Histadrut, which is Israel's largest workers' organization of trade unions. Established in December 1920 during the British Mandate for Palestine, the Histadrut is a supra-organisation, within which are organized various sectors of workers in both the public and private sectors.*

*The Histadrut established a constitution applicable to its organized members and workers' institutions, which regulate, inter alia, the right to choose representatives of employees in workplaces and its institutions.*

*Workers' association usually made as Industrial unions in the Histadrut, formed in large or small units, in various working sites. Along with the Industrial unions, there are **bargaining units** at the same working place, usually defined as craft bargaining units.*

*The recognition of bargaining units is derived from an agreement between the parties to collective labour relations. This collective consent, allowing different bargaining units, is generally between the employer and the Histadrut as the general union which represents the workers.*

*As part of labour relations in Israel, there are also professional unions such as: the Academic Staff Union, Teachers' Union, Israel Medical Association (ima), etc.*

*In some working places, more than one union is recognized as the representative workers' union. This is, for example, the case in hospitals where most of the workers are represented by the Histadrut, while the doctors' sector is represented by IMA. Another example is the Open University, where the Histadrut is the recognized representative of the workers, while the Junior Academic Staff is represented by a different union.*

*In recent years new labour organizations have begun to organize workers, especially in workplaces where the Histadrut is not the representative labour organization, or failed active representation on the workers behalf.*

*According to Collective Agreements Law, 5717 – 1957, the workers' organizations which represents at least 33% of the workers in the bargaining unit, is recognized as the sole and only representative union of all the workers in the same unit, which is generally the entire workplace. Accordingly this recognized workers union can be party to a special or general collective agreement; can represent the workers' views and interests in internal working mechanisms of collective dispute resolution; can represent individual workers or collective workers' interests, at legal proceedings in labour courts; and as party to a collective*

*agreement may be present at every proceeding regarding collective agreement interpretation, and claim [Labour Court Law, 1969]*

*The Histadrut, as the main union, excluding its' own sectors of workers, is in no position to issue rules that regulate the relationship between the different employee organisations, which are not part of its sectors' such as their mutual competition for members and the right to conclude collective agreements with employers.*

### **Competition between employee organisations**

- 1.2. Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

*Israel has no statutory provisions that prevent competition among employee organisations. Such competition is controlled by the Commissioner of Labor Relations, and by judgments of the National Labour Court.*

*Normative principles relating the status of unions and competition between unions at a workplace are anchored in general law principles and in judgments of the National Labour Court. Ruling principles of the National Labour Court were established in legislation regarding the protection of primary place of work organization, such as: the Right of every employee to to be a member of an employees' committee and of an employees' organization, and to be active in the framework thereof; Prohibition on Penalizing an Employee for Membership or Activity in an Employees' Committee or Employees' Organization; Duty to Conduct Negotiations with a Representative Employees' Organization upon the initial organizing [Collective Agreements Law].*

*The phenomenon of competition between two main trade unions of workers [see question (i)] or between two employee organizations which do not belong to any main union, or only one of them belongs to a main union in the same workplace including in initial worker's organization, is innovative and developing in the recent years. Usually the competition is between the Histadrut and other newly formed smaller unions, in the workplace. [see question (iii)]*

*Relating to competition between employee organisations that belong to the same main union is expressed in Israel, by determining the bargaining unit, changing its definition, or splitting it to several units usually within the main union. Splitting a bargaining unit to number of units is derived from a special interest to recognize a group of employees as a bargaining unit, such as physicians in hospitals or professors in universities, and due to an agreement between the collective labour parties. Usually, the labour courts will not interfere in the agreement reached. These bargaining units perform as employees' union and can be a party to collective agreements with employers. General Labour Court policy has been to favor industrial unionism, that is plant wide bargaining units encompassing all the workers in the workplace.*

*A recent decision the National Labour Court dealt with the issue of competition between two trade unions in the National Israeli Railway Company (NIRC). It was held that as long as the NIRC and the Histadrut are engaged in active negotiations towards signing a collective agreement, the newly sprung competing union won't be recognized as the representative of the workers in the same workpkace. In addition it was decided that the elected workers' representatives are primarily subject to the employee union that appointed them; they and*

*are not party to the collective agreement, nor are they authorized to sign the collective agreement.*

*Negotiations on collective agreements for the workers are usually done by representatives of the central Histadrut body, which is elected at the national level, together with representatives of the plant workers committee, the latter being elected at the plant level. Officially, only the representatives of the central Histadrut body are authorized to sign the collective agreement. However, in practice the plant workers' committee representatives also sign the collective agreement, thus indicating commitment of the plant workforce to fulfill the agreement.*

### **Anti-competitive agreements ("demarcation agreements")**

- 1.3. Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

*In Israel there is no practice of regulating the relationship between potentially competing employee organizations by demarcation agreements. Subsequently, the issue has not been brought before the labour courts.*

### **Rules for resolving demarcation disputes**

- 1.4. Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

*a. According to Collective Agreements Law, organization representing at least a third of workers in the workplace, is in status of a representative employees' union in the workplace. In case of dispute between two unions, the labour court will examine the number of members in each organization, by membership forms, not including members of both organizations simultaneously. Nevertheless, there are workplaces where there are more than one bargaining units and, therefore, a different union is recognized in each unit because it represents more than a third of the workers in that unit. Such is the case in hospitals where the doctors are a separate bargaining unit and are represented by their professional organization, the Israeli Medical Association. Whereas the other hospital workers are represented by the Histadrut. Another example is the Open University, where the Histadrut is the recognized as the representative union of the clerical workers, which is one bargaining unit, while the Junior Academic Staff is another bargaining unit and is represented by a different union.*

*b. The employee organization which is recognized as the representative union in the workplace, is credited by the presumption of representation towards the employer and the competing organizations. The presumption of representation grants the representative union the authority to represent all the employees in the workplace; to negotiate in collective bargaining, and sign collective agreements with the employer. Accordingly, the burden of proof is on the competitive union claiming to be the representative organization in the workplace*

*c. According to labour law and National Labour Court decisions, in collective bargaining, the employer is obliged to negotiate with the representative union. If the collective agreement has been canceled, provisions of the collective agreement that are part of the individual work contract continue to apply to employees.*

*d. However, the National Labour Court established Immunity period from asserting against the presumption of representation. i.e. limiting competition among workers unions about representation in the workplace, during the Immunity period. The main purpose of the Immunity Period is to establish an ongoing collective relationship, which requires*

*selecting representative employee organization for a certain minimum period. Immunity period enables the parties a reasonable time to reach collective goals. The Immunity Period will be granted to the Leading Union in circumstances of authentic, effective, negotiation taking place during a reasonable period, in a reasonable manner; or upon signing a collective agreement. In such circumstances the immunity period will cover the duration of negotiations.*

- e. Has the collective agreement been signed, and no dispute arose as to the legality of the signed union, the immunity period would be 12 months from the date of signing of the collective agreement, unless otherwise provided, given the specific circumstances of the case in question.*
- f. That does not infringe the employee's right to organize. During the immunity period, each employee as an individual still has the right to join a workers' union of his own choice. Each employee also may, at any time, give notice of leaving his union and join another employee organization***Employee organisations favoured by law**

- 1.5. Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

*The Histadrut represents the largest number of employees in the State. Accordingly and due to Collective Agreements Law, The Minister of Law and the The Minister of Labour consult with the Histadrut regarding issues of legislation, such as: Extension Order of the scope of application of a provision of a general collective agreement.*

- 1.6. Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

*No.*

## **2. The conclusion of competing collective agreements**

- 2.1. Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

*As mentioned in answer to question 1.3 above, in Israel there is no practice of regulating the relationship between potentially competing employee organizations by demarcation agreements. Although the Collective Labour Law and court's ruling have not dealt yet with this issue, according to labour law principles, the employer should not be bound by demarcation agreements between two employee organisations. The employer shall negotiate and reach collective agreements only with the representative employees' organization.*

- 2.2. Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

*According to Collective Agreements Law "where a collective agreement has been made, it shall be deemed valid even if during its period of validity an employees' organization has lost the attributes that make it a representative organization". An employer who is covered by collective agreements with representative employee organisations, cannot enter into another agreement with another employee organization that wholly or partly covered by the previous agreement.*

*Moreso, A change in the representation does not affect the collective agreement. The employer will be able to enter into another collective agreement*

*Only upon recognition of another employees' organization, and after negotiation when a change of circumstances has occurred; or if the workers' union has splitted and the other employee organization is recognized as the representative organization in the new bargaining unit.*

- 2.3. Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

*Yes. The representative employees' organization has the right to declare a strike or sanctions if the employer refuses to negotiate with him for a collective agreement.*

***If the answer to question 2.3 is yes:***

- 2.4. Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

*As mentioned above [in answer to question 2.3], only the representative employees' organization has the right to declare a strike.*

*[As noted in answer to question 2.2 above] according to Collective Agreements Law, an employer who is covered by collective agreements with representative employees' organization [A2], cannot enter into a collective agreement with another employee s' organization [A1] that wholly or partly covers the area covered by the previous agreement. Moreso, a change in representation does not affect the first collective agreement.*

*Only if a change in circumstances has occurred in the collective labor relations, and the representative union is not committed to industrial peace clause in previous collective agreement, and if the employee organization (A1) has been recognized as the representative union, this organization may use industrial action to force the employer to enter into a new collective agreement.*

- 2.5. Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

*The answer is No.*

- 2.6. An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

- 2.6.1. Is the employer automatically covered by O1 upon membership of the employer organisation?

*Yes.*

- 2.6.2 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

*In this situation, two collective agreements apply: both the special collective agreement in the workplace between the employer and employee organization A1; and general collective agreement (O1) between the employer organization and employee organisation A1.*

*If there is a contradiction between Agreements, then according to Collective Agreements Law, "the provisions that benefit the employee shall be applied".*

- 2.6.3 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

*As mentioned [in answer to question 2.2 and 2.4] above, according to Collective Agreements Law, a change in employee's organization representation does not affect the first collective agreement.*

*As noted above, the special collective agreement with another employee organization than A1, still applies. Similar to answer 2.6.2., both collective agreements in the workplace apply. i.e. The agreement with another employee organization than A 1 as well as the general collective agreement (O1).*

*According to Collective Agreements Law, "if more than one collective agreement applies to an employee, the provisions that benefit the employee shall be applied".*

### **3. Employer's use of competing agreements**

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

As noted in answer to question 2.1 above, the employer shall negotiate and reach collective agreements only with the representative employees' organization. Therefore, there cannot be competing collective agreements with competing unions at the same time, in the same workplace. If the employer had signed several agreements over the years which all apply, and there are conflicting provisions in the agreement, the employees are entitled to the most beneficial clause.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

Yes.

### **4. Can an employer leave an employers' organisation and transfer to another one?**

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

*The employer can leave the organization and transfer to another one, or can leave employers' organization altogether. Either way, the employer will not be released from **provisions** of labour rights due to the collective agreement and its' application, to which he was Previously party as a member of the organization. These principles were established in the National Labour Court's decisions.*

### **Case**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

Does it make any difference if A and S are members of the same main organisation?

*The answer to these questions has been given above. Thus, according to the Law in Israel at all times there is only one recognized representative workers' union in the workplace which is party to collective negotiations with the employer. In given circumstances only this union has the right to give notice of a strike against the company.*

*A similar situation arose recently in a conflict at the National Israeli Railway Company between the Histadrut as the union party to an ongoing collective agreement, and an upcoming union claiming to be the workers' representative in the NIRC.*

*The National Labour decided that the Histadrut which was already deeply involved in the collective negotiations has the lawfully recognized status as sole representative of the workers as such, and as the workers' representative to collective negotiations with the company.*

## Italy

National reporter: Fabrizio Miani Canevari, Presidente di sezione Corte di Cassazione Roma

### 1. Competing employee organisations

#### ***The organisation of employees' representation, main trade unions***

1.1 In Italy employees representation is organised in workers councils inside the single production unity of a business concern, main trade unions for the single professional sector (es. engineering industries), main "supra" trade unions ("confederazioni") grouping together various professional trade unions for many different sectors. Unions activity is ruled by the principle of freedom of choice of the party of a collective agreement, which means that the employer, or employer union, can choose any employees organisation to conclude a collective agreement.

There are collective agreements for the single business concern (contratto aziendale), the whole professional category of workers (contratto nazionale) or for the same professional category in a territorial area. "Contratti nazionali" for professional categories of workers are usually concluded by employers organisations and workers main trade unions (supra organisations= confederazioni).

Different rules are stated for the public sector (see 1.5., 1.6)

The rule of freedom of activity entails the validity of separate agreements with different unions for the same company, or even the same professional sector. Statute law says that "works councils may be formed by workers in any production unity, within the framework of the trade union associations that have signed collective agreements applied in the production unity". Nothing is said, however, about the rules governing the legal effect of collective agreements, or the proceeding whereby works council are formed

#### ***Competition between employee organisations***

1.2 It is then possible a competition among employees organisations in two of the four cases stated in the questionnaire (between two main unions, between organisations that do not belong to the same union). Dissension of a employee organisation that belong to the same professional union is not possible, insofar the same organisation is bound to the collective agreement concluded by the union. The same reasons are valid for the fourth

case, because the workers council is not a party of the collective agreement ("nazionale" or "aziendale" ).

Problems exist for separate collective agreements, not only (and not so much) for the competition of agreements concluded by different organisations of the same professional category, but for the breaking off inside supra- organisations ("confederazioni") , signatory of "national" category agreements, which split at the moment of renewal of the agreement, and want to sign a separate one.

Great disputes have aroused in Italy for the drawing up of a new "national" agreement for the engineering industry, after the split up of the three main "confederazioni" (supra organisations), with the separation of the major Italian automotive company (Fiat) from the employers association (Confindustria) and new collective separate agreements, favouring company level agreements (overlapping with the old "national" agreement valid until its time expiry date).

### ***Anti-competitive agreements ("demarcation agreements")***

1.3 —

1.4 There are no examples of demarcation agreements among potentially competing organisations, or rules about demarcation disputes.

### ***Employee organisations favoured by law***

1.5 For the public sector, statute law limits bargaining at national level to the employees organisations that represent no less than a certain percentage of the workers in the area. The public authority is represented by a public institute (ARAN) which can subscribe the agreement only if a given percentage of the participating unions adhere to the bargain. So exist only one agreement for a single area of the public sector

1.6 There is no compensation for the unions not included in the bargain.

## **2. The conclusion of competing collective agreements**

2.1 There are no demarcation agreements between employee organisation binding an employer when entering into a collective agreement.

2.2 Employers covered by collective agreements with an employee organisation (1) can enter into an agreement with another employee organisation (2) that covers wholly or partly the area covered by agreement 1 (see 3)

2.3 In principle, an employee organisation can try to use industrial action to compel the employer to enter into a collective agreement

2.4 This action can be in principle used even against the employers already bound by a different agreement with another employee organisation in the same area.

2.5 It makes no difference if the competing employee organisations are members of the same main organisation; however, the conflict should be managed by the main employee organisation, which means that the two unions cannot bargain for different agreements and keep belonging to the same main organisation

2.6 If an employer joins an employer organisation that has concluded a collective agreement (O1) with employee organisation A1,

2.6.1 He is in principle automatically covered by O1 upon membership of the employer organisation

2.6.2 If the employer already has a (different) collective agreement with A1, under the rules of time succession of agreement the "old" agreement should be applied until its time of expiry, unless a different deal is done with A1: usually the

collective agreements contain a provision of automatic renewal, if a notice of cancellation is not given before the time of expiry.

If the old agreement does not state a term of expiry, the stipulating parties have the option of withdrawal from the agreement

- 2.6.3 If the employer already has an agreement with another employee organisation than A1, this agreement should still apply to the employees belonging to that different organisation.

### **3. Employer use of competing agreements**

In the case of competing agreements concluded with different organisation, each agreement must apply to the workers belonging to each organisation, so the members of A1 should be paid according to O1, and the members of A2 according to O2

### **4. Can an employer leave an employers' organisation and transfer to another one?**

The employer can leave the employers' organisation, but cannot free himself from a collective agreement in force (signed by himself or his employers' organisation) before the provided time of expiry; if a time of expiry is not established in the agreement, the employer can withdraw leaving the employers' organisation (in the FIAT case, a time of expiry of the agreement was fixed, so the withdraw of the company from the employers' organisation could not bear an effect on the efficiency of the agreement before that date)

#### **Case**

The industrial action (strike notice) of employee organisation A should be found legal, because the existence of the collective agreement between the company B and the employee organisation S does not bar a new different agreement, applicable for workers in the same company premises which are not members of organisation S. However, it does not seem possible that A and S are members of the same main organisation, which allegedly has been part of the agreement previously reached by S. (A should first of all withdraw from the main organisation).

## **Norway**

National reporter: Marit B. Frogner, Judge, Labour Court of Norway

### **1. Competing employee organisations**

*The organisation of employees' representation, main trade unions*

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

**Answer:**

In 2008<sup>45</sup>, the overall trade union density rate was 53,1 per cent; around 80 per cent of employees in public sector and 38 per cent of employees in private sector were unionised. In the private sector, there were considerable variations between industries and branches; 57 per cent of employees employed in the industry are unionised, 23 per cent only in trade in retail and 20 in hotels and restaurants<sup>46</sup>. There are also difference in trade union density rate based on gender and age.

There are four main organisations (confederations of trade unions):

- LO (the Norwegian Confederation of trade unions)
- UNIO<sup>47</sup>
- YS (The Confederation of Vocational Unions)
- Akademikerne (The Federation of Norwegian Professional Associations)

LO is by far the largest organisation. In 2008, LO organised 26,6 per cent of the employees and thus around half of the unionised employees. UNIO was second largest – organising 9,7 of the employees. YS organises 6,9 per cent of the employees and Akademikerne 4,6 per cent.<sup>48</sup> 4,1 per cent are members of “independent” unions.

The largest employer organisation is NHO (the Confederation of Norwegian Enterprise). The second largest is Virke (the Enterprise Federation of Norway). The third largest is Spekter. To a large extent, Spekter organises former state owned entities such as the mail service, railroad etc. The hospitals are also members of Spekter. Within its fields, Spekter organises almost all the employers<sup>49</sup>.

In the following, we will not, unless explicitly stated, comment on the rules and regulations that apply to the State sector<sup>50</sup>. Further, we will to a large extent limit our comments to the LO-NHO area.

#### Collective bargaining:

According to the Labour Disputes Act § 3, trade unions, employers and employer’s organisations may request negotiations with the aim of entering into or revising a collective agreement. The provision also refers to institute industrial action provided that the necessary procedural rules are complied with. This provision does not impose a duty on the other party to enter into such negotiations. It is merely intended to serve as a reminder on the starting points. Any trade union may request collective bargaining.

Consequently, minority trade unions have collective bargaining rights. This implies that they may, subject to the procedural rules that apply according to law, institute collective actions with a view to concluding collective agreements.

#### The levels of collective agreements / hierarchy:

In private sector, the major trade unions and employers’ organisations have entered into basic / main agreements. To a large extent, the basic agreement between LO and NHO has

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<sup>45</sup> Kristine Nergaard, *Fagorganiseringen i Norden*, Fafo-notat 2010:25 page 16

<sup>46</sup> See note 1 above, page 17

<sup>47</sup> UNIO consist of ten main national unions. Members have a university or college education, and the majority works in the public sector. The main national unions affiliated to Unio include, but is not limited to, the Union of Education Norway, the Norwegian Nurses organisation, Norwegian Association of Researchers, Norwegian Police Federation.

<sup>48</sup> Kristine Nergaard og Torgeir Aarvaag Stokke, *Arbeidslivets organisasjoner 2008/2019*, Fafo-rapport 2010:47 ( Fafo Institute for Labour and Social Research)

<sup>49</sup> See note 4 above, page 34

<sup>50</sup> There are to a certain extent deviating rules, see for instance our comments under no 1.5.

been a model for other basic agreements and also influenced legislation. The basic agreement between LO and NHO has rules on, *inter alia*, industrial disputes (procedural rules etc.), shop stewards, layoffs, information, cooperation and codetermination etc.

General collective agreements<sup>51</sup> are entered into between trade unions that are member of an umbrella/main organisation (Confederation) on the one hand and an employers' organisation on the other. The union / employers' organisation typically organises on a national level for a sector or an industry etc. These sector or branch specific collective agreements typically regulate pay, working hours, holiday etc. The basic agreement is "Part 1" of these agreements. In other words: The industry agreements are entered into between the main organisation and the relevant trade union within the main organisation. The main organisation is the superior party to these agreements in procedural as well as in substantive regards.

Local collective agreements or local subordinate agreements<sup>52</sup> may be entered into at the enterprise level.

(See no 1.3 in regard to the norm of inderogability.)

#### *Competition between employee organisations*

- 1.2. Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

#### **Answer:**

Yes. There is competition between trade unions affiliated to different main organisation and between affiliated and independent unions. Consequently, there is also competition between main organisations. Further, there is also competition between trade unions affiliated to the same main organisation.

See comments below in regard to demarcation agreements.

#### *Anti-competitive agreements ("demarcation agreements")*

- 1.3. Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

#### **Answer:**

##### General comments:

An employer is free to enter into collective agreements, regardless of whether he is bound by other collective agreements - even if another agreement covers the same or similar work.

Notwithstanding, based on the norm (principle) that a collective agreement cannot be derogated from (inderogability)<sup>53</sup>, the agreement is in general assumed to be based on the understanding / principle that the employer cannot enter into another collective agreement covering the same work which in substance differs from the agreement already

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<sup>51</sup> In Norwegian: Ofte betegnet "overenskomster"

<sup>52</sup> In Norwegian: "Særavtaler"

<sup>53</sup> In Norwegian: Ufravikelighetsnorm

in force. The second agreement does not necessarily have to be similar to the existing collective agreement, however, the employer has a duty to ensure that the “competing” collective agreement does not over time imply a real differential treatment of employees bound by different collective agreements (see our comments below).

See also our comments under 1.4.

#### The norms of inderogability:

Firstly, a statutory norm of inderogability applies to certain individual employment agreements: An employment agreement between an employer and an employee cannot contain any clause derogating from the collective agreement<sup>54</sup> if the employee and employer are both bound by (the same) collective agreement. (The individual employment agreement shall be considered invalid to the extent - and to the extent only - that it is in breach with the collective agreement.) This norm applies both in the employee’s favour and disfavour. Thus, an employer cannot treat an employee more favourable than stipulated in the collective agreement unless the agreement itself allows this.

Secondly, based on case law from the Labour Court, an employer cannot treat unorganised employees differently. (This is an obligation for the employer - the individual employment agreement will not be invalid. The individual (unorganised) employee cannot derive rights from the collective agreement since he is not (directly) bound by the agreement. The parties may, however, agree that the collective agreement shall apply correspondingly.)

Further, the norm of inderogability applies in relation to “subordinate” collective agreements<sup>55</sup>. They cannot derogate from the superior collective agreement. In this context, the principle is based on case law and often included in the basic agreement<sup>56</sup>.

Finally, the norms apply to “competing” collective agreements: An employer who is bound by a collective agreement has a general duty to ensure that *competing* collective agreements does not result in real differences between employees bound by different agreements. Consequently, an employer may be bound by several collective agreements covering the same work or group of employees. There is no requirement that the agreements are identical, and there may be a period of adjustment. It is sufficient that the agreements over an acceptable period of time are sufficiently harmonised in order to satisfy the requirement of “likeness”. We may add that should the employer, in breach of the first collective agreement, enter into a substantially different collective agreement, both agreements will be valid and binding. Thus, the breach of collective agreement in relation to the first agreement does not imply that the second agreement is invalid.

The norms of inderogability described above are, with the exception of individual employment agreements in section 6 of the Labour Disputes Act, based on case law. It may however, as mentioned in regard to subordinate / local collective agreements, be stipulated in a superior (basic) collective agreement.

#### Demand for new collective agreement (LO–NHO):

The Basic Agreement between LO and NHO has detailed procedural rules in event of demand for new collective agreement.

During the term of a collective agreement, LO and NHO may demand that the collective agreement shall apply in a member enterprise that has not been bound by the collective agreement between the organisations, cf. section 3-7 no 1 of the Basic Agreement. The same applies if an enterprise that is bound by a collective agreement commences activities

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<sup>54</sup> Cf. section 6 of the Labour Disputes Act and section 13 of the Public Disputes Act

<sup>55</sup> The content of this norm in regard to competing collective agreements is disputed in legal theory.

<sup>56</sup> Cf. section 4-1 of the Basic Agreement between LO and NHO

that are not covered by the existing collective agreement for that enterprise, cf. section 3-7 no 2.

According to the Basic Agreement, a principle of representation applies. There is a condition that no less than 10 per cent of the employees in the enterprise within the agreement sector are organised in LO/the union, cf. section 3-7 no. 2.<sup>57</sup>

The demand shall apply to the existing collective agreement between LO and NHO that applies to enterprises of the same type, cf. section 3-7 no. 4.

The question of which collective agreement is to be made applicable is decided by LO and NHO<sup>58</sup>, cf. section 3-7 no. 4. The union and national association are not empowered to bind the central organisations. If the demand is disputed, the dispute may be submitted to the Permanent Arbitration Tribunal in LO/NHO.

The consideration in LO in regard to which collective agreement is to be made applicable are, in general, not public. The same applies to other main organisations.

#### Demarcation disputes:

LO has internal rules, including rules for the internal organisational committee (LOs organisasjonskomité), concerning demarcation disputes<sup>59</sup>. In practice, questions concerning possible demarcation disputes are often settled between the unions.

As a summary, LO determines which union the members shall be affiliated to. In general, the right to enter into collective agreement (bargaining rights) and right to organise the trade unionists/members rests with the same union (national union). The questions as to which collective agreement that shall apply are determined by LO and NHO. If an agreement is not reached, the dispute is settled by the Permanent Arbitration Tribunal in LO/NHO. Thus, the decision by the Tribunal may entail that the applicable collective agreement is not with the union with the right to organise the trade unionists/members<sup>60</sup>.

#### *Rules for resolving demarcation disputes*

- 1.4. Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

Answer:

No, see no. 1.3 above.

Essentially, there are no demarcation agreements between unions affiliated to one main organisation and those affiliated to another main organisation or independent trade unions.

On the other hand, between trade unions affiliated to the same main organisation, rules on demarcation and resolving demarcation disputes apply. These rules differ between main organisations, but basically they focus on the nature of activity in question. The decision-making also differs, from a special internal body vested with deciding disputes of this kind (LO) to board decisions (YS). The union to which a collective bargaining area is accorded, will in general also have the right, internally, to unionise workers in that field.

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<sup>57</sup> This requirement does not apply in enterprises with less than 25 employees. However, they will usually follow this rule. Vertical agreements and individually applicable agreements are excepted.

<sup>58</sup> In practice, the union (member of LO) sends a demand and the employer's association confirms this.

<sup>59</sup> In 2010, Fafo, was engaged by the negotiations department in LO to prepare a report concerning demarcation and organisational disputes in LO. The following is based on this report (Fafo-rapport 2010:17).

<sup>60</sup> See Fafo-rapport 2010:17 and note 14 above.

Further, in major parts of the private sector a mechanism of deciding on which collective agreement that shall apply, is also of consequence. This mechanisms are internal to a main organisation mutual relationship and is of no consequence to competing unions outside of this relationship. Whereas the default rule base on case law is that an employer who enters an employers' association is bound immediately by the applicable collective agreement, the basic agreements' rules in question provide for a procedure, involving some substantive requirements, in order for an existing collective agreement between the main organisations to be binding on the employer. In this regard, a key point is that there are criteria for choosing the appropriate collective agreement if more than one is potentially applicable, and a procedure including settlement by a permanent arbitration panel if the parties disagree on the choice. However, such mechanisms are not the same in all parts of the private sector.

#### *Employee organisations favoured by law*

- 1.5. Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

**Answer:**

Outside the public sector, there are no differences between the organisations.

However, in some very specific areas, the larger unions are given some prerogatives by law. For instance, according to the Labour Disputes Act<sup>61</sup>, unions with at least 10 000 members are entitled to submit recommendations for lay judges to be appointed to the Labour Court. Further, pursuant to the Working Environment Act, unions with right of nomination may enter into collective agreements that to a large extent deviate from the rules on working hours laid down in the Act.

The Public Service Labour Disputes Act<sup>62</sup> applies to all categories of state employees in the State sector. Pursuant to the Act, the State and unions "with a right to negotiate" have a mutual right and duty to bargain / negotiate if a request for collective bargaining is put forward from either side. An union with a right to negotiate is defined in the Act based on representativeness, cf. section 3.

- 1.6. Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

**Answer:**

No.

## **2. The conclusion of competing collective agreements**

- 2.1. Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

**Answer:**

No. (see 1.3 above)

- 2.2. Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

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<sup>61</sup> Act of 27 January 2012 no. 9

<sup>62</sup> Act of 18 July 1958 no. 2

**Answer:**

Yes, see 1.3 above.

- 2.3. Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

**Answer:**

Yes, provided that the organisation/union complies with the procedural rules that apply according to the Labour Disputes Act.

The collective agreements (Basic agreements) generally contain procedural rules and a requirement with regard to representation, see our comments above (1.3) concerning demand for new collective agreement.

We may add that a restrictions on the right to use industrial actions may follow on the basis of a collateral peace obligation (aksessorisk fredsplikt) – industrial actions cannot be used with a view to obtain a collective agreement if another union/employers' organisation affiliated with the same main organisation already has a collective agreement covering the same work with the employer/union.

*If the answer to question 2.3 is yes:*

- 2.4. Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

**Answer:**

See our comments under 1.3 above. An employee organisation may use industrial actions in the scenario described in 2.4. As long as the trade unions are not members of the same main organisation, it does not matter that the employer is already bound by a collective agreement. There is no judicial review of the substantive aspects in this regard.

Should there be a situation where two unions that are members of the same main organisation (umbrella organisation), this will be solved internally – or between the main organisations.

- 2.5. Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

**Answer:**

See 2,3, 2.4 and 1.3 above. In regard to LO, we may add that the consent of the Executive Board must be obtained prior to issuing a demand for a new collective agreement or termination of an existing agreement. Possible demarcation disputes will be solved internally.

- 2.6. An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

2.6.1. Is the employer automatically covered by O1 upon membership of the employer organisation?

**Answer:**

Whether the employer would automatically be covered by the collective agreements upon membership depends on the by-rules of the employers' organisation and the applicable collective agreement. (See also our comments under 1.4)

Commonly, the union must demand that a collective agreement shall apply and that the union is representative, see 1.3 above in regard to demand for new collective agreement.

There are, however, some employers' organisations where the employer/enterprise is bound by the applicable collective agreement by virtue of membership. As an example, we may mention the Norwegian Employers' Association for the Financial Sector (Finansnæringens Arbeidsgiverforening/FA) where membership also implies that the underlying enterprises are considered to be members and bound by the collective agreements that FA has entered into<sup>63</sup>.

- 2.6.2. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

**Answer:**

See our comments under 1.3 and 2.6.1 above.

As mentioned earlier, we will mainly comment on the scenario within the LO-NHO-area. The Basic Agreement has rules on new collective agreement owing to changes circumstances, cf. section 3-8.

- 2.6.3. Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

**Answer:**

See our comments above (1.3, 2.3 and 2.6.2).

If the employer is bound by another collective agreement at the time of joining NHO, that agreement shall apply until it is terminated, cf. section 3-7 no. 5 of the Basic Agreement.

As described in 1.3, the fact that the employer has a collective agreement with *another* employee organisation than A1 does not prevent A1 from demanding that their collective agreement shall apply. (As mentioned under 1.1., the national unions are to a large extent affiliated to different main organisations.) Provided that the procedural rules are observed, the employee organisation may initiate industrial action.

For instance in the oil industry, it is common that the employer is bound by (quite similar) collective agreements with Industri Energi (which is affiliated with the main organisation LO) and SAFE (which is affiliated with the main organisation YS).

**See also our comments in 1.3. above (in regard to the norms of inderogability).**

### **3. Employer's use of competing agreements**

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or

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<sup>63</sup> The board of FA may exclude an subsidiary from membership

- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

**Answer:**

See our comments under 1.3 above.

The parties to the collective agreement(s) may reach an agreement. If no such agreement is in place, the employer must pay the members of A1 according to O1 and the members of A2 according to O2. (For employees who are not members of A1 or A2, the answer is not entirely clear. There is no principle in Norway that the most advantageous rate (alternative c) shall apply.)

**4. Can an employer leave an employers' organisation and transfer to another one?**

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

**Answer:**

An employer may leave an employers organization. The conditions depend on the by-laws of the organization.

Pursuant to section 7 of the Labour Disputes Act, an employer is not free from his obligations pursuant to the collective agreement by leaving the organization. (The same applies if an employee leaves the union.) The employer continues to be bound by the obligations ensuing from the collective agreement until the expiry of the agreements ordinary period of validity.

**CASE**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

Does it make any difference if A and S are members of the same main organisation?

**Answer:**

If the strike notice complies with the procedural rules in the Labour Disputes Act, it will be a legal. In other words: The employee organisation A is not bound by the collective agreement between S and the employer B. Therefore A is free to demand a collective agreement, regardless of whether the employer already is bound by a collective agreement for a category of workers covered by another collective agreement.

These starting points are the same if A and S are members of the same main organisation, but there may be special provisions in the basic agreements, see 1.3 above. Furthermore, the Labour Court has in some cases stated that there exists a corollary peace obligation between members of the same main organisation; i.e. that not only the organisation which is directly bound by the collective agreement must refrain from collective action. An employee organisation which is member of the same main organisation may in some cases not have recourse to industrial action in order to press for a collective agreement if there is a collective agreement between the employer/employer's organisation. The extent of this special peace obligation is not clear, and there has only been a few cases before the Labour Court where the principle has been applied.

## 1. Competing employee organisations

### *The organisation of employees' representation, main trade unions*

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

Slovenian Constitution defines freedom of the trade unions as a special right to establish, operate and join trade unions freely. Employers' rights of association is guaranteed under the general constitutional right of association.

State may not prescribe such conditions that might directly or indirectly affect the right to freely form trade unions. The freedom to form trade unions also means that the unions themselves adopt its own rules and internal regulations, to freely choose their representatives and to self-manage and operate their programs of action. The state should not interfere in the exercise of those rights, except in so far as in the individual cases it was necessary to protect individuals against abuses by the union or its organs: action contrary to the rules, unreasonable or arbitrary rules, unacceptable consequences, and the like.

A special Act of the representativeness of trade unions (ZRSin) provides a way to obtain legal personality and way of obtaining the representativeness of trade unions. Trade Union shall acquire legal personality on the date of the decision on the retention of the statute or other basic act. Conditions in ZRSin to issue a decision requires the submission of an Statute, proof that the union was really established, and that the request was made by a person authorized by Trade Union. Administrative authority the facts just recorded, and on this basis, the decision only finds that the union became a legal entity. None of these conditions does not affect the right of anyone to establish Trade Union, adopt the statute and choose Trade Union representatives.

The issue of representativeness is linked to trade union freedom of action. All trade unions are representative for representing its members in the promotion and protection of their economic and social interests and rights. What ZRSin essentially governed is the position of "most representative trade union" - union, to which the legislature recognizes certain specific rights. One of the consequences of trade union pluralism is also a large number of unions representing their own interests (in a given area, in the particular activity, industry or profession or in a single organization) and each of them alone decide whether to unite with other Trade Unions in Federation or Confederation or to otherwise coordinate common interests. In relations to the State and to employers each Trade Union act alone as the representative of its members. Where there is a relationship with employers and the state in matters of general validity, it is accepted an option, which allows the representation of only those unions, which represent the majority of employees. This avoids the excessive number of negotiation and contract partners,

addressing only a partial interest in solving generally valid issues and facilitate the achievement of concrete results.

Representative trade unions are those that:

- are democratic and exercising the freedom to join unions, freedom of their operation and implementation of membership rights and obligations
- continuously function for at least six months;
- are independent of state authorities and employers,
- are funded mainly from fees and other internal resources,
- have a minimum number of members in accordance with the provisions of ZRSin.

Representative are Federations or Confederations of Trade Unions (main unions) which members are Trade Unions of different industries, occupations or activities in which members are at least 10% of workers in specific industries, business or profession. In industry, business, profession or employer representative are Trade Unions which are members in an Trade Union Federation or Confederation which is representative of the state. In industry, business, occupation or employer representative is also the Trade Union that is not a member of the Federation or Confederation, if it is a member of at least 15% of workers in specific industries, business, occupation or employer. Under the same condition ( membership of at least 15% of workers) representative is also Trade Union in the employer.

In Slovenia there are currently 45 registered representative Trade Unions for certain activities and professions, among which are six Federation and Confederation of Trade Unions for the private sector and one Confederation of Trade Unions for public sector.

Collective agreements are concluded by Trade Unions or associations of trade unions as a party on the side of workers and employers or associations of employers as a party on the side of employers, in accordance with their statutes or other adequate documents.

Collective agreements in the binding section regulate the rights and commitments of parties which concluded the agreement, and may also regulate the manner of peaceful settlement of collective labour disputes.

The Labour Courts have jurisdiction over the collective labour disputes between the parties to the collective agreement, or between parties to the collective agreement and third persons, in respect of the existence or non-existence of the collective agreement or its implementation, and disputes over the representativeness of trade unions.

### ***Competition between employee organisations***

- 1.2 Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

We can speak of competition between unions. To a lesser extent, there will be a competition between unions that belong to the single main union, but certainly the competition between main unions and competition between employee organisations that do not belong to the single main union, or that do not belong to any main union.

Slovenian legislation (which is examined in this part by the Constitutional Court) maintained "monopoly" of Trade Union's to conclude collective agreement on employees'

side. Therefore we can not speak about competition between elected workers' representatives and a trade unions to conclude collective agreements. There is also a clear regulation that the right to workers participation in management would not prejudice the rights and obligations of trade unions to protect the interests of its members. Employees (workers) Council should refrain from any form of trade union struggle. On the other hand Trade Unions has a decisive role in elections for workers Councils.

### ***Anti-competitive agreements ("demarcation agreements")***

- 1.3 Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members ("demarcation agreements")?

Such a possibility is not excluded, but it is not specifically provided or arranged in the law. It is left to the unions themselves and their respective statutes and rules. For example, the Statute of the largest Federation of Trade Unions, which includes 16 different trade unions, provides rules for settlement of competence disputes between members of the Federation: mediation and arbitration.

In practice, Trade Unions generally reach an agreement, which will sign a collective agreement with a specific association of employers. In addition, the Collective Agreements Act provides when more trade unions or associations of trade unions, or more employers or associations of employers act as a party, the party determines a negotiating group for negotiations, while each of them are signatories to the agreement.

### ***Rules for resolving demarcation disputes***

- 1.4 Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

No, there are no general rules (see answer 1.3.).

### ***Employee organisations favoured by law***

- 1.5 Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

Representative Trade Unions conclude collective agreements of general validity, and participate in the bodies that decide on matters of economic and social security of workers and nominate candidates to participate in the management, in accordance with special regulations. Representative Trade Unions participate in Economic and Social Council, where together with Government and Employer's association coordinate law proposals and other documents affecting workers. Social and other agreements related to salaries and specific economic and social affairs are concluded in the framework of a tripartite partnership. Representative Trade Unions also have representatives in a social security institutions (Health insurance Institut, Pension and Invalidity Insurance Institut) and in the National Council (Upper House of the Parliament).

- 1.6 Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

No.

## **2. The conclusion of competing collective agreements**

- 2.1 Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

No.

- 2.2 Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

Yes

- 2.3 Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

As the collective bargaining is free and voluntary, no one can be compelled to conclude a collective agreement. Constitutional right to freedom of trade unions can not be interpreted so as to provide the union the right to conclude any collective agreement. Such right of union would necessarily entail an obligation to conclude a collective agreement on the employers side: and this would not be freely and voluntarily, but at the request of other parties.

However, this does not mean that Trade Unions can not organize a legal strike for concluding a collective agreement or amendment thereto. It is a conflict of interest in which the strike is a legitimate means of pressure of the Trade Union on employer if negotiations for a collective agreement or the procedures of peaceful settlement of the dispute are not successful.

*If the answer to question 2.3 is yes:*

- 2.4 Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

If an agreement with another employee organisation (A2) was signed by one or more representing Trade Unions, such collective agreement is valid for all workers employed by an employer or employers to whom the collective agreement applies. This means that there would be no basis for employee organisation A1 to force the employer to conclude collective agreements also with him. But there is a possibility to accede to an already concluded collective agreement and thus become its signatory and then perhaps demand for its amendment.

- 2.5 Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

It is a question of internal organization and Statute of the Trade Union Federation or Confederation who is a signatory (party) of the collective agreement.

- 2.6 An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

- 2.6.1 Is the employer automatically covered by O1 upon membership of the employer organisation?

In principle no. As a rule, in the collective agreement signed by the employers' association must be provided for which members of the association is valid. Therefore it would be necessary to supplement such collective agreement, except if there is already provided, that applies to all members. In this case, the collective agreement "automatically" also apply to joined employer.

- 2.6.2 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

Makes no difference.

- 2.6.3 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

No difference.

### **3. Employer's use of competing agreements**

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or
- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or
- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

A collective agreement is valid for the parties of the collective agreement or its members and for all employees of an employers to whom the collective agreement applies, if the collective agreement is signed by one or more representing trade unions.

When an individual employer is bound by more collective agreements of the same kind at the same level, those provisions which are more favourable to employees are applied. However, it is a question which provisions are more favourable to individual employee. This will in practice mean the same as the answer b): the employer will be required for each worker to check which collective agreement is the most advantageous.

If a collective agreement on one or more activities is concluded between one or more representative trade unions and one or more representative associations of employers, one of the parties may propose to the minister responsible for labour to extend the validity of the whole of the collective agreement or a part of it to all employers in an activity or activities for which the collective agreement has been concluded.

### **4. Can an employer leave an employers' organisation and transfer to another one?**

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

A collective agreement is valid for the parties of the collective agreement and its members. When the signatories of a collective agreement are associations of trade unions or associations of employers, the collective agreement must contain a provision determining to which members of the association it shall apply. A collective agreement binds the parties to the collective agreement or their members also when a signatory leaves the association, but for a year at the most.

### **Case**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

Does it make any difference if A and S are members of the same main organisation?

Which collective agreement is valid for an individual employer depends on two criteria: the activities performed by employer and the membership in employer's association, which has signed a collective agreement. Employer alone decides about both and he is not bound by different agreements of Trade Unions.

If employer's association whose member is the company B signed a collective agreement with Trade Union S, company B (and all of its employees) is covered by this collective agreement and is not required to sign a collective agreement with union A.

## Spain

National reporters: Antonio Martín Valverde (Social Chamber of the Supreme Court),  
Miguel Angel Limón Luque (Social Court of Las Palmas de Gran Canaria)

### 1. Competing employee organisations

#### *The organisation of employees' representation, main trade unions*

- 1.1 On the trade union side, there are in Spain two supra-organisations or main trade unions: CC.OO. (Trade Union Confederation of Workers' Commissions) and UGT (General Workers' Confederation). This national dominance of two main trade unions has led to the coining of the term "bi-unionism" to describe the structure of the trade union movement. It would in fact be more accurate to speak of "imperfect bi-unionism", since there are other trade unions organisations which, although clearly minority groups in the system of industrial relations representation as a whole, are important or even dominant in certain regions (e.g. ELA-STV in the Basque Country) or specific occupational sectors (e.g., USO, the Workers' Trade Unionist Confederation, in large enterprises, particularly public enterprises; CSIF, Independent Public Employees Trade Unionist Confederation, in public administration).

The recurrent appellation "confederation" is misleading. The most outstanding feature of the Spanish trade unions is the high degree of centralization, which is only partially offset by the activities of representative bodies within enterprises. With rare exceptions, it is the trade union confederations which set until now the collective bargaining policy, take part in discussions with the authorities, are represented on the governing bodies of public social services, manage the bulk of the financial resources and are responsible of internal discipline.

The framework of the trade union movement as described in broad outline here has been shaped by various factors. A key factor is historical: in the years of "political transition" (from Franco-regime to the Parliamentary Monarchy) a large number of regional and sectoral trade unions were set up under the impetus of the respective recently legalised

confederations, with a view to the rapid reconstruction of the whole machinery. Another important factor is legal: the very favourable position of the “most representative” trade unions is projected from the main trade unions onto each and every regional district by the mechanism of the “extension of representativeness” to the bodies included in each district. Conclusion: the atmosphere lacks of “oxygen” out of the main trade unions.

### ***Competition between employee organisations***

- 1.2 In Spain the relationship between the employee organisations is competitive only in certain territories, sectors and circumstances. The prevailing strategy is “unity of action”, that means that the major trade unions act jointly in the foremost battlefields (collective bargaining, “social dialogue”, “social concertation”).

The main circumstance in which the trade unions compete is “union elections”, term used in Spain to refer to elections of workforce representatives in enterprises (workers’ committee and workers’ delegates) and in the public service (staff council and workers’ delegates); they are held, in principle, every four years. The use of the term “union” is technically incorrect, since the workers and their representatives need not necessarily be union members; but the trend shows a great proportion of the vote in “union elections” going to the mean confederations; besides, and above all, the results of the elections of workers’ representative in workplaces is the way to determine or measure the representativeness of the trade unions and the special position of the “most representative” trade unions.

The strategy of unity of action (i.e. coordination and non-competition between trade unions) is fully applied in collective bargaining. This strategy is favoured on the employers’ side by the consolidation of a single supra-organisation as the mouthpiece at national level: the CEOE (Spanish Confederation of Employers’ Organisations), in which is integrated CEPYME (Spanish Confederation of Small and Medium-Sized Enterprises). Centralization is less marked on the employers’ side, though the CEOE has played a more directive role in industrial relations than it has in its other areas of activity.

Answering the particular questions: i) no, except not frequent cases; ii) no; iii) yes, but not specially frequent; iv) yes, but very recently the law has given preference in company agreements to the workplace branch of the unions if they obtained majority in the workers’ committee in the “union elections”.

- 1.3 Formal demarcation agreements are not known. But the demarcation of the relevant sectors for the collective bargaining is similar in the main trade unions. The territorial demarcation follows the territorial organisation of the State.
- 1.4 Spanish law leaves the parties free to decide on the bargaining unit (functional, geographical and occupational sphere in which collective bargaining is carried on). Spanish law permits the most representative trade unions and employers’ associations to establish rules on precedence and coordination between agreements by means of general multi-industry agreements (established in fact) and lays down that, in the absence of such agreed rules, an agreement may not, while it is in force, be affected by another agreement of differing scope (principle of non-concurrence).

But recent legislative reforms of the collective bargaining, in the heart of the current economic crisis (2011-2012), give priority to the employers and workers’ representative at the workplace to loose off a sectoral collective agreement under certain circumstances. Besides, these recent statutes have given priority to the company agreements in the regulation of the most important employment and work conditions.

- 1.5 Yes, the law gives a special status to the “representative unions” and, above all, to the “most representative unions”; as said, such status is accorded to unions which achieve a

minimum number of representatives in “union elections” (see 1.2.). Representative unions have, in its sector or area, the right of negotiating generally applicable collective agreement. Obviously, most representative unions have also the right of negotiating generally applicable collective agreement; right extended to its member organisations. The status of most representative union confers, moreover, the right to be represented on the appropriate public bodies, and the access to special financial and material facilities (use of “union asset”, accumulated in various ways by the official “vertical” unions of the Franco regime) from the part of the public authorities.

1.6 No.

## **2. Conclusion of competing collective agreement**

2.1 See 1.3. Legally trade unions, employers and employers’ associations have the duty to accede to a request for negotiations and to maintain positions that make it possible to reach agreement when the request is legitimate. Spanish law permits refusal of a request to bargain when justified on legal or contractual grounds, when a current agreement exists, or in cases not involving the renewal of an existing agreement which has expired.

2.2 No, for the duration of the collective agreement (1), in application of the principle of non-concurrence. But, at the end of the duration of the agreement (1) the parties of the collective bargaining can change the bargaining unit. Moreover, the principle of non-concurrence does not prevent the consented “articulation” or “complementarity” (not conflicting concurrence) of collective agreements of different bargaining unit; typically, a company agreement may complement a sectoral agreement.

2.3 Yes.

2.4 This kind of industrial action is not legal for the duration of the collective agreement (A1). At the end of the collective agreement it is legal. But it is necessary to keep in mind that in the present collective bargaining system most of the sectoral and company agreements are generally applicable; that is to say, they applied to all workers and employers included in the unit bargaining. And in these generally applicable agreements all the representative trade union (or majority workplace branch of the unions) have the right to take part in the bargaining committee.

2.5 For the historical and legal reasons explained above (see 1.1. and 1.5.), the case of competing employee organisations members of the same main trade union is not realistic in the Spanish collective bargaining system.

2.6 In Spain, these questions are merely hypothetical concerning the generally applicable agreements, whose application does not depend on the membership of the employer (or employee) organisation. But the employer can in any case “protect” his company agreement against the “invasion” of the sector agreement.

## **3. Employers’ use of competing agreements**

In case of not conflicting concurrence of collective agreements the employer must apply the remuneration rate of the collective agreement that is the most advantageous to the employee.

## **4. Can an employer leave an employers’ organisation and transfer to another one?**

Yes. But the transfer does not mean that he/she become free from a general applicable collective agreement. The collective agreement that he/she has signed is in force, in principle, until the moment of its expiration.

## **Case**

Mutatis mutandis, the A’ s strike notice would not be legal in any case, under Spanish law.

National reporter: Michaël Koch, Former President, National Labour Court

### 1. Competing employee organizations

#### *The organization of employee's representation, main trade unions*

1.1 In Sweden, the vast majority of those trade unions which cover the whole nation are affiliated to one of the three main organizations on the employee side. The role of these main organizations normally is not to directly represent employees visavi employers, but to deal with general issues that arise in the cooperation between the member unions and to represent the unions and their members in general political and social issues. The biggest main organization, LO, is an association of 14 trade unions with a total of around 1.7 million (blue-collar) workers. TCO is an association of 16 trade unions with a total of around 1.2 million (white-collar) workers. Finally, SACO is an association of several trade unions with a total of 0.5 million employees with academic education. These main organizations normally do not act in court proceedings, unless there is a legal dispute concerning the interpretation of an agreement which the organization itself has entered into. Collective bargaining agreements are generally entered into by the affiliated trade unions, which also may represent the member workers in court. In disputes that may be dealt with by the Labour Court as a first and last instance, the trade union has under some circumstances a legal right to represent its member. In practice, the trade unions also represent their members in other disputes, i.e. disputes that are dealt with by the District Courts as a first instance. A main organization may issue rules on the relationship between the different member trade unions only to the extent that this is provided for in the by-laws of the main organization. In other words, the deciding power of the main organization is depending on what the member trade union has accepted by being a member. At least as far as LO is concerned, there is a body that in practice sometimes makes decisions on demarcation between member trade unions which have not themselves been able to make an agreement as to which trade union should organize a certain category of workers.

#### *Competition between employee organizations*

1.2 Competition between trade unions does occur, but not to a great extent. Competition between unions belonging to LO has already been mentioned and is resolved in the way described above. There are a few minority organizations (mainly blue-collar workers), i.a. for dock workers, which compete with the corresponding LO union. There is also quite a number of syndicalistic organizations, which however cannot be considered as serious competitors to the LO organizations. Sometimes discussions occur as to the border-line between an LO union and a TCO (white-collar) union. These disputes are generally settled by the parties themselves. Sometimes, however, a legal dispute is brought to the Labour Court.

#### *Anti-competitive agreements (demarcation agreements)*

1.3 Agreements of this kind are sometimes made by two trade unions. It seems that these agreements are not publicized.

#### *Rules for resolving demarcation disputes*

1.4 There are no rules that address the issue of demarcation as such. From a legal point of view, the problem is whether a collective bargaining agreement does or does not cover a certain task. The answer to that question may in the end be given by the Labour Court in a dispute between the employer side and the trade union regarding the correct

interpretation of the agreement. If the court's answer means that the agreement actually covers the task, this does not theoretically exclude that another collective bargaining agreement also covers the same task. In other words, there may be an overlap between the two agreements.

### ***Employee organizations favoured by law***

- 1.5 Among trade unions, only the main organizations LO, TCO and SACO have a legal right to nominate members of the Labour Court. The appointment is decided by the government. Consequently, minority organizations of different kinds have no rights in this respect. This seems to be the only existing preferential treatment, at least in the field of labour law in a more strict sense.
- 1.6 Unions that do not have the right mentioned above (1.5) do not receive any compensation.

## **2. The conclusion of competing collective agreements**

- 2.1 The employer is not legally bound by a demarcation agreement between two trade unions by entering into a collective agreement. As mentioned above, it is a matter of interpretation of the collective bargaining agreement in question to decide whether a certain task is covered by the agreement or not. However, if there is an agreement between two unions, the employer normally has no reason not to accept this agreement.
- 2.2 Yes, an employer bound by a collective bargaining agreement may enter into another agreement that wholly or partly covers the same area. However, the legal effects of this second agreement are not the same as those of the first agreement. The principles in this respect, which have been developed in case law, mean that the two agreements may exist together so that provisions in the second agreement concerning solely the relation between the employer and the union – rules on negotiation etc. – are to be fully and completely applied, unless the employer cannot apply these provisions without violating the older agreement. As to provisions directly concerning the relation between employer and employees, the older agreement is to be applied in situations where the two agreements are incompatible. This is normally the case as to remuneration to individual workers. A worker who is member of the union which has signed agreement 2 will therefore receive salary etc. according to agreement 1. In addition, it should be noted that being a party to a collective agreement in itself is an advantage for any trade union, since this means that certain labour law rules will be applicable, e.g. rules that entitle the trade union to participate in a greater extent in negotiation ("co-determination") with the employer. This may be an independent and sufficient motive for a trade union to strive for a (second-hand) collective agreement.
- 2.3 In principle, the trade union is entitled to use industrial action in order to achieve a collective agreement.
- 2.4 In cases where the employer is already bound by a collective agreement which covers the tasks in question, the scope of the (second) trade union's right to industrial action may be affected. In this situation, the right to industrial action depends on the precise purpose of the action. If the union's purpose is to replace the first agreement with legal effect not only for the union's own members but also for members of the union that has signed the older agreement, the action is deemed to be an attack on the first agreement and therefore a violation of the legal peace obligation. If, on the other hand, the purpose is not of this character but simply e.g. to obtain the legal effects of a second agreement (cf 2.2 above), the action is considered to be legal.
- 2.5 It makes no difference if the two unions are affiliated to the same main organization.

- 2.6 Yes, the employer is automatically bound by the agreement O1, signed by the employer organization (2.6.1). However, the employer's entering into an employer organization does not mean that he will be automatically bound by agreements signed by that organization in so far as he is already bound by another collective agreement (in this case the agreement O1). If the two agreements are identical, this last-mentioned exception seems to have no practical consequences (2.6.2). It makes no difference if the employer already has an agreement with another trade union than A1: the employer will not be automatically bound by the agreement O1 in so far as he is already bound by another collective agreement (2.6.3).

### **3. An employer's application of competing agreements**

In situations where an employer is bound by two collective bargaining agreements, one of the two agreements is normally signed before the other. If for instance the agreement O2 is made later than O1, O2 will be considered as a second agreement with the more restricted legal effects described above. If the rules on remuneration in O1 and O2 are incompatible, the employer is obliged to apply the agreement O1 visavi individual workers, regardless of which union they belong to. The employer cannot choose freely between the agreements, or pay workers differently, or apply the agreement that seems most advantageous to the employee. In other words, the answer is neither a), b) or c). The older agreement prevails.

### **4. An employer leaving an employer's organization**

An employer may leave an organization under the conditions and time-limit which may be prescribed in the organization's by-laws. Regardless of the content of those by-laws, the employer may leave the organization after notice within a reasonable time. If he has been bound by a collective bargaining agreement signed by the organization, he will continually be bound by the agreement until it expires. The same is true if he is bound by an agreement signed by himself, i.e. he is continually bound until its expiration.

### **Case**

Firstly, a demarcation agreement between A and S does not in any way affect the legal situation for B. Furthermore, it makes no difference if A and S are members of the same main organization.

Would a strike undertaken by A be legal? The precise answer depends on the legal relation between B and S. If they have been mutually bound by a collective agreement which according to B and S in itself covers (or have been deemed to cover) the tasks in question – and this seems to be the case here – the fact that A and S enter into a demarcation agreement does not change the legal situation for B. This means that a strike undertaken by A is legal only if the purpose is not to replace this agreement with effect also for members of S. – If, on the other hand, B and S are not bound by a collective agreement that covers the tasks in question, there are in principle no legal obstacles against the strike undertaken by A.

## **Venezuela**

National reporter: Juan Rafael Perdomo, Magistrado, Tribunal Supremo de Justicia

### **1. Competing employee organisations**

#### ***The organisation of employees' representation, main trade unions***

- 1.1 Please give a brief description of how employees' representation is organised in your country. Are there one or more supra-organisations (main trade unions) comprising a number of employee organisations and which by law or by virtue of rules of associations to a greater

or lesser extent represent these employee organisations in, for example, court proceedings. And are these main trade unions in a position to enter into collective agreements (for instance together with a member organisation) with an employer or employer organisation? Is the main union in a position to issue rules that regulate the relationship between the different employee organisations such as their mutual competition for members and the right to conclude collective agreements with employers (see questions 1.3 and 1.4)?

**Answer:** In Venezuela, the employee's representation is free. The 2012 Organic Labour Law of Worker (LOTTT, for its acronym in Spanish) only demands that the statutes include the number of members of the board of directors and other directing boards, their chores, duration and positions that are covered by the union sphere, as well as the way such directors are elected, always based under democratic principles, according to what is established in the law. The causes and proceedings to revoke the mandate from the members of the board of directors and how members can be substituted during the existence of the board must be also mentioned (Article 384.10, .11 and .12 of the LOTTT).

Employees have the right to create autonomous and permanent unions and these, at the same time, have the right to constitute federations and confederations, even internationally, in order to defend, develop and protect their individual rights and interests, as well as to achieve social, economic and moral improvement for their associates (Articles, 353 and 356 of the LOTTT). Both the organisations and supra-organisations are legally able to represent their affiliates when dealing with collective labour negotiations and disputes, especially in conciliation, mediation and arbitration proceedings. They are also able to promote, negotiate, celebrate, review and modify collective labour conventions and demand their implementation. They can also represent and defend the employees in need, even if they are not members of the union, in the exercise of their rights and protection of their individual and collective interests, in their relationships with their employer and administrative procedures. In case of legal procedures, they could represent employees, with the appropriate legal assistance (Article 367.6, .7 and .9 of the LOTTT).

Federations and confederations are entitled to issue statutory rules to regulate the relation between different organisations of employees. However, the LOTTT ensures the principle of union autonomy, according to which all unions have the right to enjoy full autonomy and special protection from the State. No union may be intervened or suspended by other unions, nor their functions may be restricted or put under pressure, nor discriminated, as all these actions are against the right of democratic participation (Articles, 354 and 357 of the LOTTT).

### ***Competition between employee organisations***

- 1.2 Is the relationship between the employee organisations in your country such that it would be appropriate to speak of competition among them? This question specifically relates to (i) any possible competition between two main unions (see question 1.1); (ii) any competition between employee organisations that belong to the same main union; (iii) any competition between employee organisations that do not belong to the same main union, or that do not belong to any main union; or (iv) any competition between elected workers' representatives and a trade union.

**Answer:** No. The relation between employee organisations in the Bolivarian Republic of Venezuela is not based on competition, as they are not created or authorised to such ends. However, the 1999 Constitution of the Bolivarian Republic of Venezuela (CRBV, for its acronym in Spanish) and the LOTTT establish the principle of freedom of association, according to which all employees, without any previous authorisation and as considered convenient, have the right to freely constitute organisations to defend their rights and interests, as well as to affiliate themselves or not to such organisations, according to the

law (Articles 95 of the CRBV and 353 of the LOTTT). Therefore, the existence of more than one union from the same field of work might become a sound competition, always bearing in mind common objectives: to guarantee the collective and permanent training of their affiliates in order to achieve an integral development and to reach an fair and peaceful society based in the ethical valuation of labour; to contribute with the production and distribution of goods and services to satisfy the needs of the people; to control and monitor costs and earnings, for the prices of goods and services to be fair for the people; and to promote the liability of the affiliates with the community and environment (Article 367.1, .2, .3, .4 and .5 of the LOTTT).

### ***Anti-competitive agreements (“demarcation agreements”)***

- 1.3 Is it common for potentially competing employee organisations (including main unions) to enter into agreements with each other regarding the criteria for allocating individual employees to the different organisations (for example according to their education) with a view to limiting or avoiding competition for its members (“demarcation agreements”)?

**Answer:** No, in the Bolivarian Republic of Venezuela, all employees have the right to affiliate themselves to the organisations of their preference (principle of freedom of association) (Article 95 of the CRBV and 353 of the LOTTT). Consequently, anti-competitive agreements (demarcation agreements) are not allowed.

### ***Rules for resolving demarcation disputes***

- 1.4 Are there any rules governing how demarcation disputes between the individual employee organisations are solved? If yes, please describe these rules.

**Answer:** No, anti-competitive agreements (demarcation agreements) are not allowed in the Bolivarian Republic of Venezuela.

### ***Employee organisations favoured by law***

- 1.5 Are there any employee organisations in your country that by law or other public regulation are given preferential treatment compared to other employee organisations in one or more areas?

**Answer:** No. In the Bolivarian Republic of Venezuela, the principle of union autonomy is ensured, according to which all unions have the right to enjoy full autonomy and special protection from the State. No union may be intervened or suspended by other unions, nor their functions may be restricted or put under pressure, nor discriminated, as all these actions are against the right of democratic participation (Articles, 354 and 357 of the LOTTT). Therefore, there are no organisations that are given a preferential treatment by law.

- 1.6 Do the employee organisations that by law/regulation as mentioned in question 1.5 do not enjoy the same rights/legal position as other employee organisations, receive any kind of compensation in this respect?

**Answer:** There are no organisations that are given a preferential treatment. Therefore, no organisation receive any kind of compensation.

## **2. The conclusion of competing collective agreements**

- 2.1 Are employers bound by demarcation agreements between two employee organisations? (see question 1.2) when entering into a collective agreement?

**Answer:** No. Anti-competitive agreements (demarcation agreements) are not allowed in the Bolivarian Republic of Venezuela. However, the conditions of the collective labour convention become mandatory clauses and part of the individual work contracts signed

while valid in the field of the convention, even for those employees who are not part of the union that subscribed the convention. Moreover, the conditions of the collective conventions shall benefit all the employees of the organisation once the conventions are signed, except the representatives of the employer, who need to be authorised as they participate in the decision-making process. Also, when an organisation has departments or branches in different locations that correspond to different jurisdictions, the collective convention signed with the union that represents the majority of the employees shall be applied for all departments and branches (Article 432 of the LOTTT).

- 2.2 Can employers who are covered by collective agreements with employee organisations (agreement 1) enter into an agreement with another employee organisation (agreement 2) that wholly or partly covers the area covered by agreement 1?

**Answer:** No. In the Bolivarian Republic of Venezuela, the law does not regulate the right of employees who have signed a collective agreement through an organisation, for them to sign with another agreement with another organisation to improve the first collective agreement. This measure would be unnecessary, as the conditions of the collective convention become mandatory clauses and part of the individual work contracts signed while valid in the field of the convention, even for those employees who are not part of the union that subscribed the convention (Article 432 of the LOTTT).

- 2.3 Is an employee organisation, in principle, in a position to use industrial action (strikes, blockades) against an employer or employer organisation in order to coerce/compel/force the employer to enter into a collective agreement?

**Answer:** No. No. Anti-competitive agreements (demarcation agreements) are not allowed in the Bolivarian Republic of Venezuela. However, The right to strike is a constitutional right for employees, with limitations established by law (Article 96 of the CRBV).

The strike must be requested by the organisation that represents the majority of the employees. If there is a doubt of which organisation is more representative in case of an eventual strike or collective conflict, the administrative authority shall represent the employees.

*If the answer to question 2.3 is yes:*

- 2.4 Is the scope for an employee organisation (A1) to use industrial action to coerce/compel/force the employer to enter into a collective agreement affected if the employer is already covered by an agreement with another employee organisation (A2) that wholly or partly covers the area that is covered by the agreement that A1 wishes to conclude with the employer?

**Answer:** Yes, as the conditions of the first collective convention become mandatory clauses and part of the individual work contracts signed while valid in the field of the convention, even for those employees who are not part of the union that subscribed the convention (Article 432 of the LOTTT).

- 2.5 Does it make any difference with regard to the response to question 2.4, if the competing employee organisations are members of the same main organisation? See question 1.1.

**Answer:** There is no difference, as the law recognises the rights of all employees, whether they are members of the organisation that subscribed the convention or not.

- 2.6 An employer joins an employer organisation that has concluded a collective agreement with an employee organisation A1 (O1).

- 2.6.1 Is the employer automatically covered by O1 upon membership of the employer organisation?

**Answer:** No. However, in Venezuela, if the collective labour convention is signed through a normative labour meeting in order to improve the conditions to provide services in the same field of work, with a local, regional or national reach, or in the public or private sector and through an administrative authority, such convention might extend the effects produced at the meeting to the entire field of work (Article 452 of the LOTTT).

It is also important to highlight that other unions might adhere to the meeting at any time, which gives them the same legal effects that correspond to the original members of the meeting (Article 461 of the LOTTT).

In any case, other unions which would like to benefit from the legal effects approved in the meeting of collective convention need to adhere to the latter through a previous agreement and request the adhesion to the administrative authority. This would not hinder the requisite of representing the majority of employees. Therefore, it is possible to demand and estimate the mandatory extension of the collective convention (Article 469 of the LOTTT).

- 2.6.2 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with A1? If yes, then what is the difference?

**Answer:** Yes. If an employer has signed a collective agreement with an employees' organisation and joins an employers' organisation that has already signed another collective agreement with the same employees' organisation, the joining employer is governed by the collective agreement previously subscribed.

- 2.6.3 Does it make any difference with regard to the response to question 2.6.1, if the employer already has a collective agreement with another employee organisation than A1? If yes, then what difference?

**Answer:** Yes. If an employer has signed a collective agreement with an employees' organisation and joins an employers' organisation that has already signed another collective agreement with the same employees' organisation, the joining employer is governed by the collective agreement previously subscribed.

### 3. Employer's use of competing agreements

An employer is covered by two different collective agreements. One (O1) is concluded with employee organisation A1 and the other (O2) is concluded with employee organisation A2. The two agreements contain two different remuneration rates for the same work and the question is therefore which remuneration rate the employer should use when paying remuneration.

- a) Can the employer choose which of the two remuneration rates to use in respect of all employees, or

**Answer:** No, the employer must choose the fee that is more convenient for the employees, as the conditions of the collective labour convention become mandatory clauses and part of the individual work contracts signed while valid in the field of the convention, even for those employees who are not part of the union that subscribed the convention. Moreover, the conditions of the collective conventions shall benefit all the employees of the organisation, even if they join after the convention has been signed. (Article 432 of the LOTTT).

Also, the Constitution states the principle of progressiveness, according to which the collective labour convention shall not be implemented under conditions that are less favourable for employees than the ones contained in the valid work contracts (Articles 89.1 of the CRBV and 434 of the LOTTT).

- b) Should he pay the members of A1 according to O1 and the members of A2 according to O2, or

**Answer:** No, the employer must choose the fee that is more convenient for the employees for the reasons aforementioned.

- c) Should he use the remuneration rate of the collective agreement that is the most advantageous to the individual employee?

**Answer:** Yes, the employer must choose the remuneration fee for the collective agreement that is more convenient for the employees, as mentioned before.

#### **4. Can an employer leave an employers' organisation and transfer to another one?**

If yes, under what conditions? Moreover, under what conditions, if at all, can an employer free him or herself from a collective agreement? One that he or she has signed, one that his or her employers' organisation has signed when he or she was a member?

**Answer:** Yes, an employer may leave an organisation and join another, as they have the right to join organisations without further limitations than the ones established in the Constitution, the law and international agreements that have been subscribed and ratified by the Republic (Articles 52 of the CRBV and 360 of the LOTTT).

However, the employer cannot leave a collective agreement if they subscribed it. The employer must respect their obligations until another agreement is signed, as the conditions of the collective labour convention become mandatory clauses and part of the individual work contracts signed while valid in the field of the convention (Articles 432 and 435 of the LOTTT).

If the employer was a member of an employers' organisation and signed a collective agreement through a normative labour meeting in order to improve the conditions to provide services in the same field of work, with a local, regional or national reach, or in the public or private sector and through an administrative authority, or if the employer has adhered to such convention or if the effect of the collective agreement from the meeting have extended to an entire field of work, the employer shall assume the legal effects (Article 452 and 461 of the LOTTT).

#### **Case**

Employee organisation A gives notice of a strike against company B because B has rejected a demand by A to establish a collective agreement. B's employer organisation protests and states that production at B's premises is covered in every respect by an agreement between B and the employee organisation S, and that there is therefore no legal basis for A's claim for setting up an agreement.

A demarcation agreement has been concluded between the employee organisations A and S. Under this demarcation agreement, the work done at B belongs to A's area of interest.

For the past 6 years before A's strike notice, B has used the agreement with S for all work performed at B without A raising any objections.

Is A's strike notice legal?

**Answer:** No. Anti-competitive agreements (demarcation agreements) are not allowed in the Bolivarian Republic of Venezuela. However, the conditions of the collective labour convention become mandatory clauses and part of the individual work contracts signed while valid in the field of the convention, even for those employees who are not part of the union that subscribed the convention (Article 432 of the LOTTT). Therefore, the strike from the party A has no legal basis when B's convention is applied.

Moreover, in order for a strike to be legal in Venezuela, employees need to follow the procedure established by law: submit the request before the administrative authority, notify the employer,

constitute a board of conciliation. In case the dispute is not solved, a board or arbitration must be constituted. Also, employees need to wait a short period of time to proceed to suspend collective work (Articles 472 and 487 of the LOTTT).

Does it make any difference if A and S are members of the same main organisation?

**Answer:** There is no difference, as the law recognises the same rights and duties for employees, whether they are members of the organisation that subscribed the convention or not.