XIVth Meeting of European Labour Court Judges
4 September 2006
Cour de cassation
Paris

SLOVENIA

Collective agreements

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Preliminary remarks

At the Tenth Meeting of European Labour Court Judges in Stockholm, 2 September 2002, there was a discussion on the theme of the *Role of Collective Bargaining* (General Reporter: Judge Harald Schliemann, Federal Labour Court of Germany; National Reporter for Slovenia: Judge Janez Novak, Supreme Court).

Since then, there have been considerable changes in the legislation that governs collective bargaining and collective agreements. On 1 January 2003, the new Employment Relationship Act came into force, in June 2003 the Civil Servants Act, on 1 January 2005, a new Labour and Social Courts Act and in May 2006, a new Collective Agreements Act. In 2005, Slovenia ratified the ILO Convention No. 154 concerning the promotion of collective bargaining.

The answers to the questionnaire are based on the new legislation.

1. Definitions

1.1 What is the definition of the collective agreement in your country?

A collective agreement is an agreement with which the representatives of workers and the representatives of employers agree on the lowest admissible level of mutual rights, obligations and responsibilities stemming from the employment relationship. On the basis of the provisions in a collective agreement, employers and workers conclude employment contracts which define the mutual rights, obligations and responsibilities regarding a particular worker, at least to the extent specified in the collective agreement. As a rule, collective agreements regulate mutual rights, obligations and responsibilities of the contractual parties (the obligational part) and the general conditions, rights and obligations stemming from the employment relationship (the normative part). The obligational part directly binds the signatories of the collective agreement, while the normative part contains general norms, some of which are only used when individual employment contracts are being concluded between a worker and an employer, while others are used directly and have a direct effect even when they are not included in individual employment contracts.

1.2 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?

Yes. In practice, there are collective agreements that apply generally (for the private sector and the public sector), collective agreements for specific branches, collective agreements for particular professions and collective agreements at the level of a particular enterprise.

2. Please summarize the history of collective agreements in your country.

On the territory of the present day Republic of Slovenia, the first collective agreements appeared in the late nineteenth century and existed until 1945. During the period between 1945 and 1989, there was a different social and economic system (known as the self-management system) with different mechanisms for regulating both individual and collective employment relationships. Only relationships between workers and the so-called private employers (craftsmen and small businesses) were regulated with collective agreements after 1972.

After 1990, collective agreements once again appeared as the normative acts aimed at regulating employment relationships, together with the simultaneous pluralisation first of trade unions and later also of employers' associations.

Today, 39 collective agreements are in force (general, branch and professional).

3. Collective agreement as a source of law

3.1 What are the constitutional or/and legal grounds of collective agreements?

In line with Article 76 of the Constitution, the freedom to establish, operate and join trade unions is guaranteed. Thus, the Constitution guarantees trade unions freedom in their operations, particularly with respect to collective bargaining and to strike action.

According to the Collective Agreements Act, collective agreements are concluded by trade unions or trade union associations as the party on the side of the workers and employers or employers' associations as the party on the side of employers, in line with their statutes or any other relevant acts.

According to the representativeness of Trade Unions Act, only trade unions that hold the position of representative trade unions can conclude collective agreements of general validity.

3.2 Does a collective agreement have a contractual or statutory status (or both)?

Collective agreements have a contractual status.

3.3 The relationship between collective agreements and other sources of law

3.3.1 How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?

Collective agreements apply just like any other contract between contractual parties and are assessed as such.

3.3.2 Relationships between collective agreements and general principles

A) Hierarchy of standards

1) Principle of hierarchy

a) Are collective agreements and covenants subject to superior standards?

Yes. Collective agreements must take into account constitutional standards (particularly constitutionally protected human rights and fundamental freedoms, and the principle of constitutionality and legality) and international legal standards, particularly those stemming from ILO Conventions and the European Social Charter.

b) Does a hierarchy of levels exist between collective agreements?

Yes. Collective agreements at the lower (narrower) level must be in line with the collective agreement at the higher (wider) level.

2) Derogations

a) Are collective agreements subject to the "principle of favour" (exemption "in melius" from the laws or higher-ranked agreements)?

Yes. Only rights that are more favourable to workers as defined in the Employment Relationship Act can be determined in collective agreements. In certain special cases collective agreements may determine otherwise, i.e. less favourably for workers (in the case of concluding fixed-term employment contracts, of limitations related to fixed-term employment contracts, to the minimum notice period, traineeship, overtime, working time regulations and disciplinary sanctions).

b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably ("in pejus") to higher ranked agreements?

Yes, although a collective agreement at the narrower level can determine rights and working conditions different or less favourable to workers only under conditions specified in the collective agreement at the wider level.

B) Principle of equality: non-discrimination and "equal pay for equal work"

1) May collective agreements set conditions of unequal treatment and are these upheld as legal?

No, unless the law allows for different treatment (for example, in some cases related to small employers), or when there are objective and well-grounded reasons.

2) Are collective agreements subject to the principle of equality?

Yes.

C) Law and order

1) Is there a definition of "social" law and order (which is different from "economic" or "management" law and order)?

No.

2) Is there a distinction between absolute and relative law and order?

Yes.

D) Is there a duty of good faith in collective bargaining?

Yes. This duty stems from the fundamental principles of contractual law (the principle of conscientiousness and fairness, the prohibition againstdoing harm, and others).

3.3.3 Collective agreements and other sources of law

A) Collective agreements and law

1) Are collective agreements allowed to abridge rights that employees have been given by law?

Not in principle, except in certain cases (see reply to 3.3.2.2) a).

2) May the law itself annex a collective agreement?

No.

3) May a law delegate some of its powers to a collective agreement?

Yes.

B) Collective agreements and regulations

1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

Yes. If one or more representative trade unions and one or more representative employers' associations conclude a collective agreement for one or more activities, one of the contractual parties can propose to the minister responsible for labour that the validity of the whole collective agreement or a part of it should be extended to all the employers in the field of activity or activities that is/are the subject of the collective agreement. The minister then establishes the extended validity of the whole collective agreement or a part of it when the collective agreement was concluded between one or more representative unions and one or more representative employers' associations, the members of which employ more than a half of all the workers employed by the employers with respect to whom the extension of the validity of the collective agreement has been proposed.

2) Are some collective agreements subject to approval by ministerial order?

No, the only mandatory step is the registering of collective agreements concluded for the whole country with the ministry responsible for labour.

C) Collective agreements and customs

1) Does a collective agreement challenge custom when its object is the same?

Yes.

2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?

No.

3) Have you something else to say about this point?

D) Collective agreements and the labour contract

1) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

No. If a provision of the employment contract is contrary to the general provisions on minimum rights and obligations of contracting parties laid down by law, collective agreement and/or employer's general acts, the provisions of law, collective agreements and/or employer's general acts which partly lay down the content of the employment contract shall be used as the constituent part of the employment contract.

2) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

In principle it is independent. The employment contract can refer to the valid collective agreements in relation to working hours, salary (except the basic salary), annual leave and notice period. See also answer to 1).

May a new collective agreement modify the contract of employment?

3) Yes, when it is more favourable to a worker. Regardless of the change of law, collective agreement or employer's general act, the worker shall retain all the rights which are laid down in a more favourable way in the employment contract.

4. Elaboration of collective agreements

4.1. Collective bargaining

4.1.1 How many levels of bargaining exist in your country?

Basically three: state, branch (activity) or professional and enterprise level.

4.1.2 How are they related?

Collective agreements at the lower (narrower) level must be in line with the collective agreement at the higher (wider) level.

4.1.3 Is collective bargaining freely decided or mandatory?

In principle it is freely decided, but the law grants workers some rights, while the amount of these rights is left to regulation by the collective agreement (for example, supplements for night work, overtime work, Sunday and holiday work, for years of service and other salary supplements).

4.1.4 What subjects may collective bargaining include?

In the obligational part, the rights and obligations of contractual parties, the manner of peacefully resolving collective conflicts may also be included. In the normative part: the rights and obligations of workers and employers when concluding employment contracts, during the duration of employment and in relation to the termination of employment contracts; remuneration for work and other forms of remuneration and reimbursements and benefits related to work; health and safety at work and other rights and obligations stemming from relations between employers and workers; and the provision of suitable conditions for trade union activities at the employers.

4.2. Conclusion of collective agreements

4.2.1. Signatories

a) Who can be parties to the collective agreement?

(1) Only unions (or their representatives)?

Yes.

(2) Also the employees, or work-council, or workforce delegates?

No.

(3) Other responses?

b) Must the parties meet a condition of representativity?

No, except for concluding collective agreements with general validity.

c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?

The agreement may be signed by only one union and it is not necessary that a majority of unions do not oppose the text of the agreement.

d) Does a right of opposition exist?

No.

4.2.2 Formal requirements

a) Must collective agreements be made in writing?

Yes.

b) Must a notice be given?

Yes.

c) Must collective agreements be registered?

Just published. Only in the case of collective agreements for the entire country, they must be recorded ("registered") with the ministry responsible for labour.

5. The enforcement of collective agreements

5.1 Scope of collective agreements

5.1.1 Geographic area

a) National, regional, local?

As a rule, at a national level. There exists the possibility of concluding collective agreements also for an area within a local community (municipality, region), although in practice this has as yet not been done.

b) International?

No.

5.1.2 Professional sphere

What jobs, professions or branches are concerned?

At the moment professional journalists, doctors and dentists.

Other professional trade unions conclude collective agreements at the level of a particular branch (activity).

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

Yes

5.2.2 What about the mandatory application of "extended" collective agreements?

If a collective agreement for one or more branches is concluded between one or more representative unions and one or more representative employers' associations, one of the contractual parties can propose to the minister responsible for labour that the validity of the whole collective agreement or a part of it be extended to all the employers within the branch(es) to which the agreement applies. The minister establishes the extended validity of the whole collective agreement or a part of it if the collective agreement in question was concluded between one or more representative unions and one or more representative employers' associations, the members of which employ more than half of all the workers working for the employers for which the extended validity of the collective agreement has been proposed. In deciding about the extended validity of a whole collective agreement or a part of it, the minister is bound by the proposer's proposal.

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

No. Unions and employers or their association can, with the consensus of the parties, accede to an already concluded collective agreement, thus becoming its signatories. Representative unions and employers or their associations can subsequently accede to a collective agreement with extended validity.

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

When a particular employer is bound by more than one collective agreement of the same kind at the same level, use is made of the provisions of the collective agreement most favourable to workers.

5.3 Binding force of collective agreements

5.3.1 Are collective agreement enforceable upon signing?

No, collective agreements come into force only after they have been published (promulgated).

5.3.2 Do collective agreements apply automatically?

Yes.

5.3.3 Are collective agreements binding (imperative)?

Yes.

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

Freely, except in cases mentioned under 4.1.3.

6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?

The Collective Agreements Act lays down a period of three years during which a signatory of a collective agreement on the employers' side can still be the Slovenian Chamber of Commerce, as an employers' organisation with mandatory membership.

6.2.2 Form and content of the contract of employment

- Requirements concerning the use of fixed-term contracts?

A collective agreement at the level of a particular branch can set out that a small employer (with fewer than ten employees) may conclude fixed-term employment contracts irrespective of the limitations defined by law (that is, not only in cases defined by law).

In the case of work that is organised in the form of a project, the collective agreement at the level of particular branch may vary from the legal requirement relating to the limiting of the conclusion of successive fixed-term contracts for the same work with the same worker (according to the law, the maximum is two years).

- Form of the contract: in writing, compulsory mentions?

The employment contract shall be concluded in written form.

If the written employment contract was not handed over to the worker, he may demand its delivery by the employer and judicial protection any time during employment relationship.

The existence and validity of an employment contract shall not be affected by the fact that the contracting parties did not conclude the employment contract in written form, or that not all components of the employment contract were laid down in writing.

In case of dispute on the existence of the employment relationship between the worker and the employer, it shall be assumed that employment relationship exists, if the elements of employment relationship exist.

- Various clauses

  - Covenant not to compete

    During the employment relationship, the worker may not for his own account or for a third account carry out work nor conclude business covered by the activity which is actually carried out by the employer and represents or might represent competition to the employer without the employer's written consent (statutory Prohibition of Competitive Activity).

    If in carrying out work or in relation to work the worker gains technical, production or business knowledge and business links, the worker and the employer may lay down in the employment contract the prohibition of competition after the termination of the employment relationship (competition clause). The competition clause can be agreed for a period not longer than two years after the termination of the employment contract and only in cases the worker's employment contract was terminated at his own will or through his fault. The competition clause has to be laid down with reasonable limitation periods of prohibited competition and may not exclude the possibility of appropriate employment for the worker. If a competition clause is not laid down in writing, it shall be assumed not to be agreed.

  - Compensation (financial) for covenant not to compete?

    If respecting the competition clause prevents the worker from gaining earnings comparable to his previous wage, the employer must pay him a monthly compensation in money during the whole period of respecting the prohibition. The compensation in money for respecting the competition clause has to be laid down in the employment contract and shall amount monthly to at least a third of the average worker's wage during the past three months prior to the termination of the employment contract. If compensation in money for respecting the competition

clause is not laid down in the employment contract, the competition clause shall be regarded as invalid.

- Probationary period?

Workers and employers can agree in an employment contract on a probationary period, which can last for a maximum of six months.

6.2.3 Minimum wages?

Remuneration for work according to the employment contract consists of a salary (wage), which must always be paid in cash, and other types of payments if these are laid down in the collective agreement. With regard to salaries (wages), employers must take into account the minimum set by law or the collective agreement directly binding the employer.

6.2.4 Classification and career of staff members?

There is a possibility of regulating this with a collective agreement in the public sector.

6.2.5 Hours of work

- On-call time and hours of "equivalence"?

Hours of work are the effective working hours and rest break time during the hours of work, as well as justified absences from work in accordance with the law and a collective agreement or general act.

Effective hours of work are any hours during which the worker carries out his work, which means that he or she is at the disposal of his or her employer and is fulfilling his or her working obligations set out in the employment contract.

- Vacation?

According to the law, workers have a right to annual leave in each calendar year, which cannot be shorter than four weeks, irrespective of whether they work full time or part time. The minimum number of the days of annual leave depends on the organisation of the working days within a week for a particular worker.

Older workers, disabled workers, workers with at least 60% physical disability and workers who care for a child with a physical or mental disability have a right to at least three additional days of annual leave.

Workers have a right to one additional day of annual leave for each child under the age of fifteen.

Longer annual leave can be specified by a collective agreement or an employment contract.

- Overtime and fixed wages?

When requested, workers are obliged to work overtime. A worker can do a maximum of eight hours overtime a week, 20 hours a month and 180 hours a year. A working day can be a maximum of ten hours' duration. The daily, weekly and monthly time limitation can be considered as an average limitation within a period defined by a law or collective agreement, which cannot be longer than six months. Overtime may not be introduced when, with the suitable organisation and division of work or the organisation of working time by introducing new shifts or employing new workers, the work can be done in normal working hours. Overtime may not be imposed on certain protected categories of workers (younger workers, older workers, pregnant women, etc.).

- Compensatory rest?

An agreement on this is possible and permissible, as long as it does not involve the re-organisation of working time.

- Part-time work?

Employment contracts can be concluded for working hours shorter than the full working time. Workers can conclude employment contracts for part-time employment with a number of employers, thus achieving full working time set by law.

- Minimum rest time and maximum work time?

Full working time cannot be longer than 40 hours a week.

Working time shorter than 40 hours a week may be set as full working time by a law or collective agreement, although this may not be less than 36 hours a week. A law or another regulation in line with the law or collective agreement can set full working time at less than 36 hours a week in relation to jobs in which there is a greater risk of injury or other health impairment. If full working time is not specifically defined by a law or collective agreement, it is deemed that the full working time is 40 hours a week.

A worker working full time has a right to a 30-minute rest break during working time. The break counts as working time.

Within a period of 24 hours, a worker has a right to a rest period lasting at least 12 uninterrupted hours. Within a period of seven consecutive days, in addition to a daily rest, workers have a right to a rest period lasting at least 24 uninterrupted hours. The minimum duration of weekly rest is considered as an average within a period of 14 consecutive days.

It can be set in a law or a collective agreement at the level of a particular activity that the time limitation of the daily obligation of a night worker (on average eight hours a day maximum) is considered as an average limitation within a period longer than four months but no longer than six months.

It can be determined in a law or a branch collective agreement that the daily and weekly rest in the average minimum duration as set out by the law is in cases of shift work ensured within a specified longer time period, which may not exceed six months.

With respect to certain activities or specific jobs or professions, a law or collective agreement at the level of that activity may set out that the daily and weekly rest in the average minimum duration, as defined by the law, is ensured within a specified longer period that cannot exceed six months.

When required by objective or technical reasons or reasons related to the organisation of work, a branch collective agreement may set out, in the case of unevenly distributed working hours, that the full working time is considered as the average working obligation within a period which must not exceed 12 months.

6.2.6 Rights of an employee who is on sick leave?

- Suspension of performance of the contract of employment?

The time when a worker is justifiably absent from work due to illness is considered as working time (as if the worker was working).

- Guaranteed resources?

Employers pay salary compensation out of their own resources in cases when a worker is incapacitated for work due to illness or injury unrelated to work for up to 30 working days for each separate absence and for a maximum of 120 working days within a calendar year. When workers are incapacitated for work due to an occupational disease or injury at work, the employers pay salary compensation out of their own resources for up to 30 days for each separate absence from work. During longer absences from work, employers pay salary compensation out of health insurance.

- Job security?

Temporary absence from work due to incapacity for work on account of illness or injury or because of caring for family members in line with the health insurance regulations, or absence from work due to the use of parental leave in line with the regulations regarding parental rights are considered unfounded reason for the termination of an employment contract.

6.2.7 Discipline

Workers must fulfil contractual and other obligations stemming from an employment relationship and are liable to disciplinary sanctions.

An employer may give a warning to or impose another sanction on a worker who is liable to disciplinary sanctions, such as a financial penalty or a withdrawal of benefits when such sanctions are defined in the branch collective agreement.

A disciplinary sanction may not permanently change the labour law legal status of a worker.

6.2.8 Vocational training?

It can be specified in a law or a branch collective agreement that a person who for the first time starts carrying out work suitable for the type and level of his or her vocational

education and with the aim of obtaining training in order to independently carry out such work in regular employment can conclude an employment contract as a trainee. Traineeship can last for a maximum of one year, unless otherwise stated by the law. A law, another regulation or a collective agreement at the level of a particular activity can determine the duration and the course of traineeship and the programme, mentorship and the method of monitoring and assessment of traineeship.

6.2.9 Follow-up of the agreement?

With respect to employment contracts, see 6.2.2.

Written employment contracts must also list the collective agreements binding the employer.

7. Interpretation of and litigations relating to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

Yes, if agreed to in a collective agreement.

7.1.2 Other bodies or organizations?

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?

Only in the case of a true interpretation, that is the interpretation of the true will of the contractual parties. Apart from that, it is the responsibility of judges to judge the constitutionality and legality of collective agreements and assess the compatibility of collective agreements.

b) Can it be retroactive?

In cases of an interpretation of a collective agreement, it is de facto retroactive.

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

Yes.

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

No.

7.2.2 Which body or authority ascertains violations?

Contractual parties themselves through negotiations; an expert appointed by the minister responsible for labour from a previously created list of experts and agreed to by the contractual parties; arbitration; a court.

7.2.3 What are the civil remedies?

a) Individual claims?

Yes.

b) Collective lawsuits?

Yes.

7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?

Yes.

7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?

A Labour Court has jurisdiction for deciding in the following collective labour disputes:

a) concerning the validity of a collective agreement and its application between parties to the collective agreement or between parties to the collective agreement and other persons;

b) concerning competence for collective negotiations;

c) concerning the concordance of collective agreements with the law, the mutual concordance of collective agreements and the concordance of general legal acts of the employer with the law and with collective agreements;

d) concerning the legality of strikes and other industrial actions;

e) concerning the participation of workers in management;

f) concerning the competencies of trade unions in connection with employment relations;

g) in connection with decisions on the representativeness of trade unions.

7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?

All collective agreements must be published; collective agreements with a general (extended) validity in the Official Journal of RS. Enterprise collective agreements must be submitted to a court by the parties involved.

8. Altering and challenging of collective agreements

8.1 Cases and procedures

8.1.1 Do procedures exist for the review and termination of collective agreements?

Yes.

8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?

The rights and obligations under the collective agreement which bound the transferor shall be assured by the transferee to workers for at least one year, unless the collective agreement terminates prior to the expiration of one year or unless prior to the expiration of one year a new collective agreement is concluded.

8.1.3 What happens before and during the time of expiration of the agreement?

If a collective agreement does not contain a notice period, it can be cancelled with a notice period of six months. After the expiry of a collective agreement, the provisions stated in the normative part regulating the rights and obligations of workers and employers when concluding employment contracts, during the duration of employment and in relation to the cessation of employment contracts, in relation to remuneration for work and other remuneration and compensations related to work and in relation to health and safety at work, continue to apply until a new collective agreement is concluded, but for a maximum of one year, unless otherwise stated by the parties.

8.1.4 What is the procedure for substituting a collective agreement with another one?

The procedure for concluding a new collective agreement or changing the existing one is initiated following a proposal by one of the contractual parties.

In a written proposal for a new collective agreement the relevant party must also include the content of the proposed collective agreement. The other party must send a written reply within a period of a maximum of 30 days from the day of receiving the proposal.

When more than one union or union association appears as a contractual party or more than one employer or employers' association, this party appoints a negotiating team, while the agreement is signed by all of them.

8.2 Can employees retain vested or established rights ("droits acquis") in case of termination of collective agreements?

See reply 8.1.3., otherwise only when the collective agreement provisions were included in an employment contract.

9. Conclusions

9.1 Is there a policy promoting collective bargaining and contractual collective law?

Yes.

9.2 Are there problems concerning the relationship between contract of employment and collective agreements?

No.

9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

The connection between law and collective agreements operates in favour of employees (principle of favour), see reply to 3.3.2.2)a) for exceptions.

9.4 Are there any additional conclusions or problems you want to mention?

The idea behind the project is quite simple: Unregistered employment is one of the major concerns of the Turkish economy which represents some 50% of the total labour force. This issue can be addressed through social dialogue, with a view to strengthening cooperation between the Government, employers' and workers' representatives.