

**Twelfth Meeting of European Labour Court Judges
Budapest, 8 et 9 septembre 2004**

Do we need labour courts?

Questionnaire

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France**

For questions 1 to 7, please provide *complete information* if you so wish and particularly if you did not attend our meeting in Jerusalem (2000), or only indicate the *important changes produced* in your country since then.

1. Is there a specialised jurisdiction for labour conflicts in your country?

Yes

2. If such a jurisdiction exists, what is its competence? Does it have competence for:

Collective labour conflicts yes

The labour courts have a competence for collective legal disputes (like work council's election, trade union's protest) but it is excluded for interest disputes. The Labour Code orders negotiation between the parties, mediation and arbitration for resolving these kind of interest disputes.

- Any collective labour dispute arising in connection with employment relationship between the employer and the trade union or between the employer and the workers' council, which does not qualify as a legal dispute, shall be settled by negotiations between the parties concerned.
- In the interest of settling a conflict, the parties may use the services of an independent mediator who is not involved in the conflict.
- In the interest of settlement of a collective labour dispute, the parties may employ an arbitrator based on an agreement. The decision of the arbitrator shall be binding, if so agreed by the parties in a written statement. The arbitration is obligatory in the case if the employer does not ensure the necessary (required) conditions to the functioning of the trade unions; or if the employer does not cover the justified and necessary costs of election and operation of the workers' council.

Individual labour conflicts yes

The labour law jurisdiction in the second instance is not separated, it is part of the ordinary appeal court system. However there are specialized panels who generally deal with labour disputes. The appeal courts also have the right to examine the facts what the decision is based on besides the legal review.

A council of appeal shall consist of three professional judges.

6. Is there a labour court at the highest level (similar to cassation)? What is its composition?

There is no separated labour court at the highest level but the arrangement is similar to the appeal courts' arrangement, there are specialized divisions for labour disputes.

The Supreme Court has the right to cassation. The division is composed by three professional judges.

7. What was the reasoning behind the creation of the labour jurisdiction? When did it take place?

The main reason is that the labour and employment disputes are considered to be different from the civil cases. The state influence is stronger for example when the state points out minimum standards as safeguards of the employees which are obligatory for the employers. Contrary to this in the civil law the main rule is that the parties' free will governs the contract.

In 1965 arbitary panels were settled, which proceeded in legal disputes. The competence of the courts was limited in that time (later the situation changed - see below) In this time the labour disputes were settled as a rule by the arbitration committees established at the county seats and in the Capital. The settlement in the second instance of a labour dispute falls within the competence of the courts only if the dispute has arisen from a deficit in the inventory taken by commercial or warehouse employees, from a damage incurred by injuries caused in life or health of the employee, from the refunding of damages caused by an offence committed by the employee or from a claim put forward by the employee for allowances due for him on the ground of the fulfilment a plan task, open competition, contract of innovation. These cases, however shall not be settled by the territorial arbitration committees. The competence of the courts excludes that of the territorial arbitration committees and vice versa.

In 1973 the Labour Courts were settled, from this time the parties had the right to appeal to the Labour Courts in legal disputes against the decisions of the arbitary panels'. The arbitary panels were ceased in 1992, when the Act XXII of 1992 on the Labour Code came into effect. From this time the competence of the labour courts is exclusive for labour disputes.

The Act III of 1952 on the Code of Civil Procedure contains **some special**

regulations in reference to the procedure of the labour courts:

- The labour courts of first instance are separated, they are on the same level with local courts. It is composed by a professional judge and two lay assessors. (see point 4)
- The labour court has the statutory obligation to conciliate between the parties at the first trial except in case of disciplinary action. (see point 12.)
- The labour law disputes are free of charge, the employer in the case if he/she lose the lawsuit have to pay the duty and the costs advanced by the state.
- The trade unions have the right to represent their members in front of the court in a labour disputes.

8. What is the dominant opinion of the “working” of the labour jurisdiction? Are there any plans to reform it, and if so please give details.

The present system of labour jurisdiction operates properly, however time to time an attempt is emerged to cease the independency and the separate feature of the labour courts. But up to now these attempts were failed.

Already in 1980 were attempts to cease the independence of the labour courts. The reason was that labour courts endanger the manpower-management because of their role to protect the employees.

In 1990 the labour courts were queried again. The oppositionals of the separated labour courts argued with the fluctuation of the number of labour law disputes and another argument was that labour courts are uneconomical.

The supporters of the separated courts argued with the necessity of **specialization of jurisdiction**. The labour law cases have to be treated with accentuated attention, **proficiency** that's why specialized expert judges are necessary in our view. The separated labour courts traditionally works in Hungary for more than 30 years, similar to other Western-European countries' jurisdiction. The transformation of the system involves the risk that the new institution will not work so good that the old one. The rapid judgement is much effectively guaranteed by separated courts than by ordinary courts. In employment relationship the social dimension of the relationship gets an outmost significance, that's why the trade unions also emphasize the importance of the separated labour courts.

The competence of the labour courts is also disputed sometimes especially for the review of the social security cases and the decisions of the public administration regarding to industrial safety and labour control.

The social security cases used to belong to the administrative department. In 1980 the labour courts competence was widen to social insurance cases, but in 1993 the administrative departments got the competence for social insurance disputes. In 2000

the Labour Courts became competent in social insurance disputes and in other legal disputes which were resolved earlier by the administrative departments of the general court system (see point 2.). The competence of the Labour Courts was widened in the last few years.

These days the reform of the Civil Code also sets up the arrangement of the labour law and the connection between the labour and civil law. There are some attempts to incorporate the labour law into the Civil Code, but many of labour experts object against this because they have a fear that it would be followed by the elimination of special protection of the employees' right and on the other hand the end of the independent labour law including the independent labour jurisdiction.

The labour court also gets a big role related to the significant fundamental principle: the equal treatment and equal opportunity. These principles also require a specialized, independent jurisdiction.

9. **Particularly in countries where the competence to deal with *individual* labour conflicts is given to the ordinary judge, is there a movement tending to say that it would be more justified that this competence be given to the labour judge?**
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10. **Particularly in countries where the competence to deal with *individual* labour conflicts IN APPEAL is given to the ordinary judge, is there a movement tending to say that it would be more justified that this competence be given to the labour judge?**

Both in the appeal and the Supreme Court the labour law cases are handled by divisions specialized on labour law cases. It means that in fact labour judges work in every instance. So in Hungary there is no movement to say that it would be more justified to give the competence to separated courts. The size of the country doesn't require separated labour courts on higher level.

11. **In the event that labour courts do not exist in your country, is their creation foreseen? If so, in what form?**
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12. **Is there a preliminary procedure of conciliation to be followed before the first instance labour court can be accessed?**

For **collective legal disputes** (like work council's election, trade union's protest) the Labour Code orders an obligatory negotiation for settlement. After the unsuccessful negotiation the parties have a right to file a demand in the court.

For **the individual labour disputes** it is used to be an obligatory preliminary procedure but the new modification of the Code ended it. But the Code ensures the right for the parties to agree in a clause ordering the participation of a conciliatory party in employment-related legal disputes.

Besides this the labour court has the statutory obligation to conciliate between the parties at the first trial except in case of disciplinary action. The president of the division discusses the case with the parties and he/she tries to make an agreement between the parties. During the conciliation he/she gives an information to the parties about the burden of proof, what significant facts have to be proved, the consequences of the failure to prove these facts and the estimated fees. If his/her efforts are unsuccessful he/she shall hold the first proceeding. However later the judge also has a right to attempt a conciliation between the parties if he/she considers that it could be successful.

We have not statistical data on the number of successfully conciliations.

13. Is there a particular procedure ensuring access to the specialised jurisdiction at any instance (1st or 2nd instance, or cassation)? If so, please explain its particularities or are normal procedures followed?

In labour law cases normal procedures are followed with small differences. (See point 7).

14. Do you have any further comments to add?

Our experiences show that this arrangement of the labour court system is useful and operates properly, therefore we strongly support the separated labour courts. In our view the protection of the employees is guaranteed by the separated labour courts more effectively than by the ordinary court system.