Eleventh Meeting of European Labour Court Judges
Florence, October 24, 2003

New Initiatives to make Labour Court Hearings more efficient: use of alternative disputes methods, collective (class) action

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General Report

Introduction:
This general report is intended as a summary of the main impressions obtained through studying the national reports.

Originally the questionnaire was destined to help in the preparation of the XIth Meeting of European Labour Court Judges held in Florence in October of last year. In generating the questionnaire, the general reporter was well aware of the various differences especially regarding the influence of collective labour law and the mechanism for settlement of collective interests i.e. between trade union and employers associations. Thus, these kinds of procedures i.e. to change tariffs or between works council and employer regarding new plant agreements, were not focussed upon in the survey.

It was more focused on the procedural aspects of handling conflicts of the individual employee. Nevertheless, the existing specific procedures and institutions for the handling of collective disputes and the different impacts of collective agreements on the employment contract could render an explanation for the significant differences in the procedural handling of individual conflicts.

The first objective of the questionnaire was to obtain information about the different procedural provisions in participating countries regarding claims of employees. This also involves the question of how they try to improve these procedures, particularly by new forms of conflict settlement especially pre-trial procedures, other procedural provisions, mediation and conciliation.

The second objective was to try to gather new initiatives on how trade unions and statutory representative bodies are enabled to support individual employees by collective - "Class"-action.

I Are there new initiatives to make Labour Court hearings more efficient?
1.What are the **main aspects**, mechanisms, or measures thattraditionally facilitate most the efficiency of the hearings of the Labour Tribunals in general and of your Court in particular, concerning either their organisation and functioning, or the procedure, and which have been adopted by law, by the judiciary or that are customary?

AUSTRIA

- Up to an amount of 30.000€ - in general, at the beginning of the proceeding, the court issues a payment order. This is enforceable if the defendant does not raise a refusal within 14 days. In 60% of all labour cases there is no refusal and the case is closed. A large number of actions are filed to the court by electronic data transfer. Payment-orders may also be issued by computer.
- -If a party does not appear at the first hearing – the other party can apply for a Default-Judgement based on the fact presented by this party.
- -It is not permitted to present new submissions or evidence before the courts of appeal and the Supreme Court.

-Parties have to appear at the first hearing in person.

BELGIUM

-Efficient deadlines for procedures.

DENMARK

- Before court procedure (within the company):
  - conciliation meeting (with representatives of employers/employees)
  - organisational meeting (with central organisation)
  - joint meeting (with all organisations)
- preliminary meeting with presiding judge- later 6 additional judges (3 of each association)

FINLAND

Individual labour law disputes handled by regular or administrative courts; special court ("Insurance Court") for social security matters. Labour Courts are competent for disputes regarding collective agreement.

- alternative solutions with regard to proceedings
- certain stages of the procedure may be skipped
- possibility to refer case from preliminary hearing to deliberative session → no main hearing
- preparation → case may be decided in preparation / main hearing will be in one continuous procedure
- attempt conciliation

FRANCE

-The conseil de prud`hommes is composed of lay judges nominated by employers'- and employees' associations.
-No formalities
-Parties have to appear in person.
-If the plaintiff does not appear the claim is refused.
-If the defendant does not appear, the possibility of a Payment-order exists in some cases.

GERMANY

- Act of speeding up Labour Court hearings.
- Reform of the Civil Process Code.
- Conciliatory hearings
- Proceedings in one litigant hearing
- Acceleration of proceedings for protection against dismissal.
- Making appeal admissible only if the value of the issue exceeds 600 €

ICELAND

-Labour Court has a limited jurisdiction only – collective disputes.
-individual disputes only if the parties and the Labour Court agree

IRELAND

-Employment Equality Acts- complainant may require the respondent to provide information- Questionnaire.
-Consequences if the respondent fails to complete the questionnaire

ISRAEL

- pre-trial hearings (registrar or judge) – settlement or narrowing the issues
- submission of written testimony affidavits and documents (→better preparation of the parties and less surprises during hearing)
- neutral medical experts appointed and paid by Labour Court
- arbitration (by private arbitrators, governmental services or experts)
- compromise judgement without reasoning if parties agree
- summary hearings of claims for less then $4000 US
- ADR – Mediation- lay members
- early neutral evaluation (ENE): experts estimate judgement before actual hearing- chosen and paid by the court
- case management: classifying and briefly summarizing the cases – determines the way of procedure
- computerization

ITALY

- plaintiff must try to reach an out-of-court settlement
  - preventive conciliation before commencement of the action

NORWAY

- distinction:	"*dismissal disputes*" handled by Municipal Court (or Court of Appeal); sits with specialist lay assessors; priority in docketing; appeal to Supreme court	/	*other disputes* Municipal Court hears disputes in 1st instance; may use (general) lay assessors; no priority;

SLOVENIA

- compulsory pre-trial hearings (also in collective labour disputes)
  mediation, arbitration ; mandatory settlement procedure for disputes arising from employees inventions..

SWEDEN

Preparatory phase.

UK

-Witness statements.
-Case management by administrative staff.
-default judgement.
-cost awards for unreasonable conduct.

VENEZUELA

- since august 2003 there are oral processes with audiences (written process only before this date)
- judges mediate between parties

Conclusions regarding items, which are not mentioned in other questions :
It seems that procedural law tends to require less formalities. There are varying ideas on how to reach a quick decision at the beginning of a proceeding in cases where the defendant has no defence or substantial objections against the claim (payment order; default judgement).
Some countries have also experienced that **it supports** (what) the process of settlement if parties have to appear in person (Austria; France).
Others have special procedural provisions for cases if there is only a minor value in litigation,
An idea which seems to be generated by the complex situation regarding the burden of proof in discrimination cases, is the obligation of the defendant to provide certain information (IR).
Some countries allow the submission of written testimony (ISR, UK).
The idea of **E**arly **N**eutral **E**valuation (ENE), where courts only appoint and pay an expert witness, is very interesting.

Pre-trial Procedure

	AUSTRIA	BELGIUM	DENMARK	FINLAND	FRANCE	GERMANY	IRELAND	ISRAEL	ITALY	NORWAY	SLOVENIA	SWEDEN	UK	VENEZUELA
2. Are there any pre-trial procedures?	No statutory provisions but in some collective agreem.	Conciliation. Written proceeding	Pre-trial negotiations: Conciliation, organisational + joint meeting within company. Preliminary meeting court with presiding judge	Disputes can be brought before Labour Courts only after negotiations : a. within the company; b. between federations	Conseil de prud´ Hommes-bureau de conciliation	Exist for some groups/cases: - trainees, seamen, invention through workers, employees in ecclesiastical duties, arbitration.	Written submissions + witness statements; list of evidence 6 weeks before hearing	ADR-mediation Pretr. Hearing Early Neutral Evaluation (ENE)	Yes.	Grievance negotiation; dismissals-assistance by adviser; Civil servants- pre-trial conciliation	Employee must write request to employer; 8 days for answer; 30 days for negotiations -before action	Mandatory negotiation before filing a case	Only Complex cases	Only administrative procedure for conciliation at Labour Ministry
a) Are they mandatory?	No		Yes	Yes	Yes	Yes, except for arbitration cases	Yes	Yes	Yes	No, except for admin. law appeal	Yes	Yes	Yes	No, except for action against Administration
b) In which way is the court involved?	No	Done by court. Court tries to persuade.	Only in preliminary meeting; not involved in pre-trial negotiations	As the last instance of the procedure	Bureau of conciliation - members of Conseil de prud`hommes	Proof the results of the pre-trial procedure	Secretariat Of the court;	Administra-tion by court	Settlement before an administrative office-or procedures laid down by collective bargaining	Not involved	Not involved	No		Only involved after unsuccessful conciliation Procedure
c) How long may they go on for?	No Limit		Company conciliation meetings.: 5 days after request. Organisational meetings.: 5 days after unsuccessful conciliation Joint meeting: immediately after interruption of work. Preliminary court meeting: 1 week trial within few weeks	2 or 3 weeks from the request	No time limit	3 months to some years	Generally 12 weeks	Few months; simple cases in few weeks	max. 70 days	grievance negotiation: max 6 weeks; others: no specific regulations on max. time	30 days	6-12 month		No formalities Records may be used
d) Who has to bear the legal cost?		No	No fees or duties to be paid; Exception :no reply or no show: 500 DDK; loser: 2000DDK	Usually no expenses		Parties pay for the procedure; sometimes only costs of representatives	Each party	the court	depends on the will of the parties	parties bear their own costs;Exception: Court of Conciliation			Each Party	No fees for conciliations, Only lawyers to be paid

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e)What effect do they have on the time of prescription?		No		Disputes (not settled in negotiations) must be brought to Labour Court within 4 months	interrupted	Depends on labour law			the request of settlement stops the time of prescription	Administrative Appeal or Court of Conciliation: interruption		No effect	Tested	Interruption

Conclusions: The understanding of "pre-trial" procedure is very different. In most countries there is some form of pre-trial procedure but this can vary. One aim of these pre-trial procedures seems to be the prevention of procedures, therefore they are usually **mandatory and the court is less involved or indeed not at all.** Some countries (Italy, France; Germany) also reported negative experiences (delay; lacking competence)
To help claimants to come to a rapid settlement or to perceive that a procedure before the court will be inevitable, it seems useful to have **some time limits** or provisions about the procedure. Furthermore, it should be provided that **the time of prescription** is interrupted or stopped. It may be helpful to have consequences if a party is not willing to comply with provisions regarding pre-trial procedure.

"LEGAL AID"

	AUSTRIA	DENMARK	FINLAND	FRANCE	GERMANY	ICELAND	IRELAND	ISRAEL	ITALY	NORWAY	SLOVENIA	SWEDEN	VENEZUELA	UK
3. Are there specific ideas for providing assistance to the plaintiff in order to raise his claim more effectively ?	Assistance by Chamber of Labour Trade unions Equality Authority; Discrimination Cases- transfer of burden of proof	Employees+ associated employers are represented by their federation/ trade union; also often by a lawyer, costs by parties/ unions	Labour Court: lawyer of its own or special lawyers; Other courts: public legal aid or private advocates; -> technical guidance	Assistance of colleagues or associations	Civil servants help to formulate actions; legal aid; chairman of court division may assign a lawyer to a party	Federations sue on behalf of their members	Guidelines of the Court for submissions; Trade unions Equality Authority	Forms for preparing complaints; help for plaintiffs by law students; free legal aid; sometimes help by unions or non-profit organizations	Free legal service for individuals with little or no income	No		No	Free legal assistance; additional assistance for very poor workers currently under discussion	Pro-bono barristers; Discrimination cases- Transfer of burden of proof

Conclusions : Forms of legal aid or assistance by associations exist in almost all countries. In some countries this associations also sue on behalf of their members. The court may also assist in coping with formalities. Transfer of burden of proof is also a product of EC directives regarding "Equality".

INITIATIVES TO MAKE PROCEEDINGS FASTER

	AUSTRIA	DENMARK	FINLAND	FRANCE	GERMANY	ICELAND	IRELAND	ISRAEL	ITALY	NORWAY	SWEDEN	VENEZUELA	UK
4. Are there any plans or proposals to restrict the possibility of making new defences after the defendants answer or for a time limit for admissibility of new evidence?	Parties are obliged to make submissions and present evidence as soon as possible; In case of gross negligence new arguments are rejected.	During preliminary hearings judge sets a schedule and is allowed to end exchange on arguments and evidence between the parties	preparation (written / oral) in order to establish important issues - one hearing; non mandatory cases-new facts may not be presented, unless acceptable reasons are probable	Deadlines for new evidence		No		Court permission is required plus good cause of the defence; no new claims or defences after hearing has begun	It is forbidden to present new statements after the first answer and the first hearing	No	No	All evidence must be presented in preliminary hearing	No new evidence in appeal unless it was not available before

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5. Are there any specific measures in procedural law to reduce the length of the hearings ?	New submissions may be rejected if they are presented to late	No rules or measures	No, only preparation of case must be completed without delay		Acceleration of certain proceedings (dismissals); conciliatory hearings (cases concerning work´s council rights)	No		Small claims (4000 €)- summary procedure – Court Decision on the extent of evidence. Appeals only if permitted.; Evidence submissions only prior to the hearing unless permission of court	Hearings for the mere adjournement of the case are forbidden		No	Parties and lawyers must attend the preliminary audience	Case management; fixed conciliation periods; c. default judgement
6. What interest has to be paid for remunerations, which are not paid at the date of maturity ?	10%; if not paid because of an acceptable error in the interpretation of law- 4%	9,75 % additional fine (20%) if brought before court	9 %	Judgment- double interest rate		17%	8%	"Wage delay compensation" wages-10% / week; severance pay - 20% a month	Legal interest and damages for monetary devaluation must be paid by the employer	12% per annum	12,5 %	The normal bank interest; amount can be raised to compensate inflation	8%

Conclusions: One important way of making proceedings more efficient seems to be the restriction of the possibility of new submissions aand evidence to the beginning of the procedure. Also, the presence of parties in person during the proceeding is very helpful since there is no need to adjourn the hearing in order to get new information from the client. Many countries pursue the idea that high interest rates will induce the debtor to pay earlier. Perhaps in some cases this may also prevent new defences which are not substantial.

MEDIATION

Mediation seems to be unknown in Sweden, Denmark and Finland (considerations). The **UK** has a statutory Conciliation and Arbitration Service. 70% of equality cases reach settlement. A judge can propose the parties to use mediation. Negotiation by legal advisers is preferred. **Iceland** relies on judges being capable of achieving settlement.

	AUSTRIA	FRANCE	GERMANY	IRELAND	ISRAEL	ITALY	NORWAY	SLOVENIA	SWEDEN	VENEZUELA
7. Is the court entitled to send the parties before a mediator ?	No, only proposal	Yes	No	Industrial relation cases; voluntary in Equality cases	Yes	mediation is voluntary;	No, only proposal		No. Mediation is undertaken by the court.	Yes
8. Are there procedural regulations for mediation ?	Consent parties; information of parties esp. about necessity of legal advice + forms ; documentation of begin , end and result (on demand) of mediation	Yes ; given by a new procedural code	No	No	Yes	No	No but trial program and proposals	Labour inspector may act as a mediator in an individual labour dispute, not mandatory	No.	No regulations, the judge initiates it and decides the steps during preliminary audience
a) Is mediation compulsory ?	No	No	No	No	For collective not for individual disputes	No	No		No.	Yes
b) How are the mediators selected? In what way is the court involved? Are the judges different from trial judges?	Parties select from a list-special admission; involved person are excluded; different form trial judge;		Selection by parties; court not involved; mediators are different from trial judges	Equality officer; In industrial Cases special trained civil servants – appointed by a commission; judge I not involved	Mediation by lay members (chosen by court+ mediation course) or special list; ADR- judge meets parties separately	see 8	If parties agree: choosing mediator themselves; if court proposes: judge acts as a mediator; different from trial judge		Chosen by the court.	The judge of the preliminary hearing; different form trial judge
c) Is it a confidential?	Yes	Yes but report to judge	No	Yes; Equality-disclosures may be used.	Yes	see 8	Yes		Yes.	Yes
d) How long may mediation go on for ?	Until parties stop	3 month-renewable	Settlement by parties;	Until parties or mediator stop	Until parties stop	see 8	No rules			Agreement or judge
e) Who has to bear the legal cost?	Each party	Judge decides	The parties	Each party	Lay member paid by court; private mediation by parties; m. by Relations Officer without charge	see 8	Parties bear their costs		The parties.	Parties

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f) What effect does mediation have on the time of prescription?	Stopped	Interrupts- part of procedure	No greater effect		hearings are set without regard to mediation	Stops the time of prescription				Interrupts the time of prescription (1 Year)
g) What training in law and procedure is given to mediators ?	Special training	Special training (Court of Appeal; Ecole National de la Magistrature	No special training; mediators come from the ranks of lawyers; legal training	Special training; Equality officer	Mediation course (40h); annual meetings with Labour Court; new program for advanced training	see 8	Specific courses on mediation, special programs for "advocate mediators"			Mediators are professional judges with training of mediation
9. How often do the parties use this possibility ?	No statistics; New statute	Rarely because of mandatory conciliation	No data available	Reasonable Number; 10%in equality	2001/2002: 4500 cases by lay members, 500 private med (1/3)	very rarely	no data available			always, obligatory
10. Do you perceive there to be a)advantages and b)disadvantages	Not yet	a) fast; acceptance b) risk-less favourable for economically weak parties		a) settlement issues are refined b) delay	a)solution by parties, good in on going employment, cheap, b)some cases precedent is required; untrained med.	a) fast solutions; b) expensive, parties can appeal against the award	no particular preferences yet		Advantages only.	a) solving conflicts; b)not yet known

Conclusions: One difficult question is how to obtain the correct definition of mediation. It seems to be a form of **voluntary** communication where a neutral person, who was not involved in the conflict, uses some special **communication techniques** to promote the understanding of the parties in conflict of the mutual points of view so that they con solve the conflict by themselves. In this context, it also seems useful that mediation is **confidential.** It may be helpful if the mediator is someone other than a trial judge**.** Another important aspect is that there are lists or procedures on how to nominate mediators while ensuring that they are also perceived as neutral persons. Parties will then disclose their real intentions and problems**.** It is typical that there are only few or **no legal provisions** for this procedure, as it is **not meant to enable someone to decide** the outcome of the conflict from a legal point of view. It is not necessarily linked with court proceedings. Therefore it is possible to try mediation without the interruption of a court procedure. On the other hand the procedure may be stopped for a certain period of time.
It is very important to have well-trained mediators, who are able to use modern technology. Regarding labour cases, one aspect of training should also deal with jurisprudence. This will less favourable results of mediation for economically weak parties**.**
Regarding the problem of the time of prescription, in many countries it is interrupted during the mediation procedure. To prevent disputes by the parties over the question of how long it was interrupted for, there should be some provision that makes it obligatory for the mediator to keep files or records where the essential facts can easily be found and proved.

The practical importance of mediation also depends on what other means are given to the parties to solve disputes.

OTHER ASPECTS

	AUSTRIA	DENMARK	FINLAND	FRANCE	GERMANY	ICELAND	IRELAND	ISRAEL	ITALY	NORWAY	SLOVENIA	SWEDEN	UK	VENZUELA
11. Does the LC request the parties to explore a possible amicable settlement and does it assist them ?	Yes	Yes, in the preliminary hearing		Yes	Conciliatory hearing at first proceedings; free evaluation of all circum-stances	Yes	Yes	They try	The judge as well as the parties can always ask for a suspension and try to reach a settlement	Yes		Yes		Yes, obligatory
12. Is it possible to obtain an order of execution even if the defendant appeals against a judgement of first instance?	In some Cases (e.g. wages…)	Judgements are not subject to appeal -> enforced after time limit has expired	Labour Court immediately enforceable; ordinary courts unless debtor lodges security	Yes; but president can stop or limit in case of severe consequences:	Yes, even before judgement becomes res judicata	Labour Court just on instance. General courts-postponed.	No	Judgement of Regional Labour Court is enforceable; losing party can obtain stay order	Judgement is immediately enforceable , but the suspension can be requested form the appeal judge	No		Yes; but on demand - Court of Appeal can suspend	Yes if no stay is granted	No experience on this matter yet.
13. Are the files managed electronically?	Registered; Payment orders; some correspondence	Electronic system recently implemented	Registration correspondence	Different	Yes (projects)	Registration	Yes	Yes, by court secretary and by case management department	No	No, only case lists and statistics		Yes	Yes	Yes
14. Are there other measures concerning the organisation and functioning of courts?		Iinformal discussions - telephone e-mail in initial stage (between court secretary and employers or employees)	No	Possible obligatory Representation before the Conseil d?Etat and the Cour de Cassation	No		No	Support services for all courts by General Court System	No	No	new law on labour and social courts-> shorter procedures, more efficient decisions, ARD	No	Administrative staff; case management	Measures to improve the tribunals efficiency; number of judges increased

Conclusions: One aim of procedural law common to all countries is to promote amicable settlement.
One possibility to help plaintiffs reach a quick result is to make decisions of first instance enforceable. Many countries provide this in one form or another. Of course, this causes some problems if in the end the other party is successful.
It is quite important that a court be equipped with sufficient administrative staff. This can make the workload much easier for judges. The ideas of case management show that it is possible to shift some competences to administrative staff.

STATISTICS

	AUSTRIA	DENMARK	FINLAND	FRANCE	GERMANY	ICELAND	IRELAND	ISRAEL	ITALY	NORWAY	SLOVENIA	SWEDEN	UK	VENEZUELA
15. Number of a)cases, b) judgements first instance c)appeals per year per 100.000 employees	**a) 800** **b) 90** **c) 30**	**a) 40** **c) 3** collective agreement; 90% settled in neg. meeting	approximately 100- 150 cases per year	**a) 1050** **c) 350**	a) **2150** b) **142** c) **79**		Total . a)590 b)382 c)208 Equality: 1300	**A)2700** **b)** **c) 60**	**a) 4820** **b) 1498** **c) 603,6** (241 judgem.) including social security	**a) 33 to 50** **b) 40%;** **c) 30%**	7042 first instance; 2708 Higher Labour Court;	**a 50** No disc. cases- Ombudsmann	**a.400** **b.291** **c.10** all together 130 appeals	one judge:25 decisions a month
16.) Cases pending longer than **1 year**	**5%**	approx. **14%**	Very few; normally 4- 5m	**75**%	dismissals:**2%;** others 4%	General C: Majority; L C:3-4 m on	0		**majority**; no data	no data	**69,20%**	**10%**	**17%**	**majority**
17. How many disputes are settled by arbitration ?	No statistics	no statistics; >90% settled in pre- trial negotiations	no data available	No statistics	43%			very few; not usual in Israel	very few	no reliable data; but very few	no data available			very few

Conclusions: Its very interesting to see the many differences in the number of disputes which have to be solved by court decision.
An eventual issue for further consideration could be if one effect of the Scandinavian System of specialized one instance Labour Courts for collective disputes is that they decide very fast and there are less individual disputes. Great effects have been reported regarding the influence of fees (Germany- Settlement: no court fees; special fees for lawyers; UK: high costs).

II "Collective (class) actions"

"Collective (class) actions" are not common before "labour courts" in the **UK** (just test cases; Equal Opportunities Commission injunction to restrain from discriminating practices**)** and **Slovenia**. In **Finland** ; trade unions have no right to represent their members in individual conflicts; before Labour Court suits are brought in by and against the parties (trade unions); there is no necessity to specify the employees (unless i.e. dismissal). There is no collective action in France.

	AUSTRIA	**DENMARK**	**FRANCE**	**GERMANY**	**ICELAND**	**IRELAND**	**ISRAEL**	**ITALY**	**NORWAY**	**SWEDEN**	**VENEZUELA**
1. Are collective actions admissible in your country? If they are, what type of collective actions does your country have?	a. Works council/employer can file a claim for a declaratory judgement of rights or legal action b. Association able to be partner of a coll. agreement can apply for a declaratory decision; in both cases this must be relevant for min 3 employees	Systems where decisions apply on individuals that are not part of the case) is not in use in Denmark; since cases before the Danish Labour Court are always in connection with the relevant employer or employee organisations, collective-industrial dispute decisions often are extensively binding	There are no collective actions. In certain cases (foreign employees; discrimination) trade union can file a substitution action on behalf of the worker if the person does not refuse.	Trade unions can go to court; decisions may be binding for members	Associations can file claims for declaratory judgements regarding rights of their members. They also proceed cases before Labour courts on behalf of their members	No, Just leading cases; others agree to accept judgement for themselves Trade union can apply for fixing employment conditions. If employer refuses collective bargaining. Director of Equality T can on request of trade union declare discriminating provisions in coll. agreem. null and void.	Collective class action possible but not common in Israel; it is considered the Unions´ role to represent workers; judgements for individuals are **binding** for all other workers under same or similar agreement	Yes, it is possible; collective actions are regulated for claims of the workers unions against wrongful limitation of the freedom of their activity; Regarding civil servants court can substitute coll. agreem. if there is no consent .	No; class actions do not exist; only collective agreement disputes	Associations can bring cases before the court to represent their members; interpretation of coll. agrreem.	Yes; normally of "declarative" nature

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2. Who are the parties to these procedures?	a) Works council/employer b) (Potential) parties of coll. agreement	See 1 above		Trade unions, employers association or single employers	Associations	Equality Tribunal	See 1 above	Local representatives of national trade unions v. the employer	Only for trade unions; employers association	Associations; directly concerned persons	Employees
3. Which courts are competent?	a)Court of first instance b)Supreme Court	See 1 above		Labour Courts	Labour Courts		See 1 above	Labour Courts	General Courts	Labour Court	All Labour Tribunals
4. What effects does their decision have?	Declaratory	See 1 above		Binding according section 9 TVG			See 1 above	The order to cease the wrongful behaviour is immediately executive	Interpretations of collective agreem	Parties; In practice also for members	Declare existence of a right; condemn the other party to pay a fee
5. For whom is this decision binding?	Only for the parties; but in practice it is Important also for individual disputes	See 1 above		Members of the unions and associations			See 1 above	For the defendant employer; regarding civil servants- for all employees	Labour Court: Interpretations of collective agree. binding for all employments	Parties	The employers concerned
6. Is it possible for a works´ council or trade union to sue or to request for ascertainment of rights or legal action? Do they have to specify employees?	Yes They do not have to specify them	Declaratory action is possible if there is a legal interest; employees do not have to be specified		No, but possibility to assert collective agreements by action		Director of Equality Tribunal can on demand of Trade unions (on behalf of discriminated persons) declare coll. agreem.. void if it is discriminating	See 1 above	Yes, the trade unions can protect the rights of special employees	Trade unions party (there exist no “works councils”) have a limited right to append to legal action regarding coll. agreem. claims on behalf of specified employees	No specification of employees if only abstract meaning of coll. agree. is in dispute	Yes, if authorised by the workers, which must be specified

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7. Who has to bear the cost?	a) Losing party b) Each party			Cases of works´ council: the employer, Cases of trade unions: parties bear their own costs		Each Party	See 1 above	Loser	Parties bear their own costs	Loser	No administrative expenses; each party pays; in case of success other party can be ordered to pay all.
8. Effect on the time of prescription?	Stopped						See 1 above	Stopped, if employee is part of judgement	Prolongs time of prescription (see 2e above)	Interrupted	Interrupt the term of prescription
9. Do public complaints procedures leading to an out of court settlement exist?	In equality cases			No.			See 1 above	No.	To Labour Inspectorate or to special law boards- right to reduce working time, sickness insurance, collective representation; - not for matters contractual rights	Court can appoint a mediator	Yes, it is possible
10. What are the main advantages and disadvantages of collective class action?	Assert rights of single without involving them in disputes. Problems arise if the facts (assumptions) of declaratory judgements are not presented correctly.	See 1 above		Only way to assert the rights of works´ council/ trade union; advantages for single workers to persue their rights; no possibility to assert individual rights by collective actions		Avoids multiplication of hearings (submissions, evidence).	See 1 above	Advantage: very effective, because judgement is immediate.	No answer possible for Norway to date.	Safe system for members of trade unions (80%). Employees can also sue at their own risk.	They allow a number of workers to act in case of common or diffused interest, with a single procedure, and a single decision valid for all of the parties concerned

Conclusions: An important distinction regarding the approach to "collective (class) actions" seems to exist if most of the questions of employment relationship are regulated by collective law or in the individual contract of employment for a particular job.
In the USA the individual contract is very important for employment relationship. In Europe, statutes and collective agreements have a large impact on employment relationship.

"Class actions" in the American style make it possible to concentrate interests of individuals regarding a certain point of view.
Thus one or more members of a class may sue or be sued as representative parties on behalf of all. There are some prerequisites to a Class Action (Rule 23 of Federal Rules of Civil Procedure):

1. The class is so numerous that it is impracticable if all members join.
2. There are questions of law or fact common to the class.
3. The claims or defences of the representative parties are typical for the claims or defences of the class.
4. The representative parties will fairly adequately protect the interests of the class.
5. The prosecution of separate actions would create the risk of varying adjudication which would establish incompatible standards or diminish the chances of other members to protect their interests; or
   the opposing party has acted on generally applicable grounds; or
   the court estimates that questions of law or facts which are common to all members are predominant over any questions affecting only individual members and a class action superior to other available methods (individual actions; already commenced actions; desirability of concentration; management).

One reason for the existence of provisions for "Class actions" in the American style in Europe could be that, associations representing the interests of their members and which create " collective agreements" exist in Europe already.
They generate a great deal of provisions which are important in an employment relationship, Therefore, they are sometimes also involved in "enforcing" these rights. One way **of what** is to give them the possibility to sue for declaratory judgement on the interpretation of such collective agreements.
In some countries these judgements have a binding effect also for the members. If this just concentrates on the abstract interpretation of the collective agreement, it does not seem to pose a problem, even under Art 6 of the Human Rights Conventions.
Another concept of "collective action" is that associations sue on behalf of their members or weak employees groups with their consent. In this kind of procedure individual rights are in dispute.

It seems very useful to compare the experiences with different means of procedural law in different countries and also their effects. Statistics show how the different systems work. This makes it easier to start new initiatives.