Eleventh Meeting of European Labour Court Judges

Florence, 24 October 2003

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

Questionnaire

General Reporter: Judge Gerhard Kuras,
Austrian Labour Court
Justizpalat
1016 VIENNA
Austria

FINLAND

National Reporter: Mr. Pekka Orasmaa, Finnish Labour Court

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

Preliminary remarks: This Questionnaire does not deal with settlement of collective interests i.e. between a trade union and an employers' association to change tariffs or between a works' council and employer regarding new plant agreements. Specific procedures and institutions to handle this kind of collective disputes exist in most countries. The main objective of this questionnaire is the settlement of specific points of law regarding claims of employees, in all instances. This also involves the question of how trade unions and statutory representative bodies may be involved in supporting this by encouraging the individual employee or representing employees interest in specific procedures.

I. Are there new initiatives to make Labour Court hearings more efficient?

1. What are the main aspects, mechanisms, or measures that traditionally facilitate most the efficiency of the hearings of the Labour Tribunals in general and of your Court in particular, concerning either their organization and functioning, or the procedure, and which have been adopted by law, by the judiciary or that are customary?

   The Finnish Labour Court is a special court, which hears and tries disputes arising out of collective agreements. Disputes concerning individual labour law are handled either by the regular courts, or, as the case may be, the administrative courts. In addition, there is a special court for social security matters, the Insurance Court.

The procedural rules followed in the Labour Court are by and large the same as those applied to civil procedure in the regular courts. To improve the efficiency of the hearings, alternative solutions with regard to proceedings and also the composition of the court have been adopted. On conditions laid down by the law, certain stages of the procedure may be skipped if warranted by the nature of the case. Thus, it is possible to refer a case from the preliminary hearing to be decided in a deliberative session without dealing the case in a main hearing. Further efficiency is purported by making it possible to decide a case already in the preparation on certain conditions. In the preparation the court and the parties have a number of duties, the purpose of which is to ensure that the main hearing takes place in one continuous procedure.

Efficiency is also one of the aims of the duty, imposed on the courts, to clarify whether conditions for conciliation exist.

2. Are there any pre-trial procedures?

a. Are they mandatory?

Most collective agreements provide for a grievance procedure for the settlement of disputes concerning the application of the agreement in question. The typical industry-wide collective agreements in manufacturing provide that if a disagreement between an employee and his immediate supervisor cannot be settled between them, grievance negotiations shall be conducted first between the supervisor and the shop steward of the department and then between the management and the chief shop steward of the plant. If these negotiations fail, either party may ask for negotiations between the federations that are parties to the agreement. Only if these negotiations fail, may the dispute be brought before the Labour Court.

If the grievance is submitted to the Labour Court before the procedure is exhausted, the case shall be dismissed except when the complainant is not to blame for the negotiations not having been completed.

What is said above applies to the Labour Court only. In the other courts handling labour law disputes, no corresponding or other pre-trial procedures are in use.

b. In which way is the court involved?

Only as the last instance of the whole procedure, as explained.

c. How long may they go on for?

The agreement clauses discussed here typically prescribe that the negotiations have to be initiated within a certain time, often two or three weeks from the request of the other party. It is not, however, common to limit the total time available for the negotiations.

d. Who has to bear the legal costs?

Usually the grievance procedure will not cause any particular expenses to the parties involved.

e. What effect do they have on the time of prescription?

Only the collective agreements applicable to the state and municipal sector include provisions on prescription. According to them, a dispute, which is not settled in the negotiations conducted in the central level, must be brought to the Labour Court within four months from the end of the negotiations.

3. Are there specific ideas for providing assistance to the plaintiff in order to raise his claim more effectively?

In the Labour Court plaintiff, usually the federation that has concluded the collective agreement in question, uses a lawyer of its own or a lawyer who is regularly contracted to deal with such cases. In the other courts, the plaintiff may be entitled to public legal aid or may resort the services of private advocates.

All courts provide technical guidance on how to carry on one's action. If an application for a summons sent to a court is found to be incomplete, a time period is set to the plaintiff within which the application must be completed at the risk of forfeiture of claims.

4. Are there any plans or proposals currently in place to restrict the possibility of making new defences after the defendants answer or for a time limit for admissibility of new evidence?

The processing of a case in the Labour Court as well as in the regular courts of justice is divided into the preparation and the main hearing. The preparation may in turn be divided into a written and an oral stage. The purpose of the preparation is to clarify the case so that it can be handled in one continuous main hearing. To this end, the following items must be established in the preparation:

- the demand and the reply and their grounds,
- the area of disagreement between the parties,
- the evidence that the parties intend to present in the main hearing, and what is intended to be established with each piece of evidence, and
- whether conditions for conciliation exist.

A reform of the procedural rules, applicable to non-mandatory civil cases, is in force as from the beginning of the year 2003. According to the new rules concerning main hearing, a party is not allowed to refer to a circumstance, which he or she has not brought forward in the preparation, unless he or she can make it probable that he or she had an acceptable reason for doing so. The same applies to reference to a new piece of evidence, unless it may be assumed that an acceptable reason exists. New evidence can, however, be accepted if both parties so agree.

5. Are there any specific measures in procedural law to reduce the length of the hearings?

In Finnish law there are no specific provisions to this effect. As regards preparatory sessions, the law contains a provision in which it is generally stated that the preparation of a case must be completed without delay. In the written preparation the exchange of briefs should be minimized, and the oral preparation should be carried out in one session. In the main hearing the court is under a duty to look after the maintenance of order and clarity. Likewise the court must ensure that the matter is handled thoroughly and not subjected to any confusion.

In practice, the courts try to limit the length of the main hearing especially by determining the issues that are in dispute so carefully that also the evidence, which is to be presented in the main hearing, can be properly selected on the basis of its relevance.

6. What interest has to be paid for remunerations, which are not paid at the date of maturity?

The interest for delay is the current European reference rate raised by seven per cent. To date, the interest for delay is 9.5 per cent.

7. Is the Court entitled to send the parties to mediation?

No.

8. – 10. Mediation.

The law contains no provision on out-of-court conciliation. As regards conciliation in court, it is provided that in a non-mandatory civil case the court must try to make the parties settle their dispute. The court may also present a draft settlement to the parties. The prospects for conciliation must be explored as part of the preparation of the case.

The development of conciliation both in the courts and out of them is one of the major challenges in the Finnish judiciary in the near future. Various development projects have already been launched and especially in-court conciliation is subject to great interest. One of the issues to be resolved is whether in-court conciliation should be developed as part of the traditional court procedure by connecting conciliation to every stage of the procedure, or whether there should be a conciliation functioning separately. Another important question is whether in-court conciliation should aim at a settlement, which corresponds to the content of the law as far as possible, or whether and to what extent other considerations, such as equity, can be taken into account as well.

11. Does the Labour Court request the parties to explore a possible amicable settlement and does it assist them?

This does not happen on a regular basis because of the grievance procedure, explained above, which precedes the court procedure and in which the possibilities for a settlement have already been explored.

12. Is it possible to obtain an order of execution even if the defendant appeals against a judgement of first instance?

In Finland there is no ordinary channel to appeal against the decisions of the Labour Court, so that such decisions are immediately enforceable.

The decision of a regular court of justice, in which someone is ordered to pay a monetary debt, can be enforced regardless of appeal, unless the debtor lodges security.

13. Are the files managed electronically?

Yes, electronic systems of registration are used in all courts. It is also possible for clients to correspond with courts electronically.

14. Are there other measures concerning the organisation and functioning of courts?

No.

15. What is the number of: a. cases
b. judgements of first instance *and*
c. appeals
per year per 100.000 employees?

Unfortunately the statistical data requested is not available at the moment. The number of cases tried by the Labour Court is 100-150 per year. The majority of labour law cases are handled in regular courts, with a number of cases handled also in administrative courts.

16. What percentage of cases remains pending for longer than one year?

The average period for trying a case in the Labour Court is 4 to 5 months. It is exceptional for the proceedings to take more than a year.

17. How many disputes are settled by arbitration?

There are no statistics to indicate the number of cases settled by arbitration. One may assume that a few dozen of them are labour law cases yearly.

II. Collective (class) action.

1. Are collective actions admissible in your Country? If they are, what type of collective actions does your Country have?

Class action is not possible in Finland. A proposal to introduce class action was drafted in the Ministry of Justice a few years ago but never led to legislative measures. Quite recently the issue has been taken up again for further preparation.

2. – 5. See answer 1. above.

6. Is it possible for a works' council or trade union to sue or request for ascertainment of rights or legal relations, if some employees are involved? Do they have to specify these employees?

Works' councils do not exist in Finland. A trade union has no general right to represent its members in court proceedings. However, in the Labour Court suits are regularly brought by and against the parties to the collective agreement in question. The associations thus represent also their members or member associations, which are bound by the agreement or in whose employment relationships the employer has to observe the terms of the agreement. As the party appears in the court in its own name, it is not necessary to specify the employees concerned, unless required by the nature of the dispute, such as in a dismissal case.

7. Who has to bear the cost?

In cases referred to above in 6., the parties to the proceedings bear the costs in accordance with the general rules applicable to litigation expenses.

8. What effect do these procedures have on the time of prescription?

In this respect the same rules apply as in cases, which are brought before a court by an individual employee or employer.

9. Do public complaints procedures leading to an out of court settlement exist?

No.

10. What are the main advantages and disadvantages of collective (class) actions?

See answer 1. above.