

Eleventh Meeting of European Labour Court Judges

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

Questionnaire

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With supplementary replies from Ms. Melanie Pine, Equality Tribunal**

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 organisation and functioning, or the procedure, and which have been adopted by law, by the judiciary or that are customary?

The pre hearing procedures of this court have been in place for some time and are generally regarded as satisfactory in ensuring that the proceedings of the court are conducted efficiently. They are updated from time to time by the Court. The details of these procedures will be given in answer to the question which follows. The Court is empowered to make its own rules of procedure and the procedures in question were formulated by the Court itself.

In cases under the Employment Equality Acts there is a statutory procedure by which a complainant may require the respondent to provide information relating to the circumstances

giving rise to the complaint. This involves submitting a questionnaire to the respondent which he/she should complete. If the respondent fails to complete the questionnaire or completes it in a false or misleading manner such inferences as are considered appropriate may be drawn.

Equality Tribunal

In relation to equality cases, the procedures at first instance in the Equality Tribunal in Ireland have been developed over more than 20 years. In normal circumstances these have proved efficient but the very significant rise in the volume of cases (from 139 in 2000 to 309 in 2002 with a further 40% increase year-on-year in the first half of 2003) has led to delays because of the fixed number of Tribunal judges (known as Equality Officers).

2. Are there any pre-trial procedures?
 - a. Are they mandatory?

The main pre hearing procedures relate to the making of written submissions by parties and the provision of witness statements prior to the hearing. In the first instance the complainant / appellant must make a written submissions setting out factual background to the case and the propositions of fact and law upon which they will rely. This submission must be received by the Court not later than six weeks from the date on which the complaint/appeal is initiated.

Once the complainant's submission is received a date for the hearing is fixed.

The complainant's submission is forwarded to the respondent who has six weeks to make a submission in response.

Six weeks before the hearing the parties are required to provide a list of witnesses to be called and a summary of the evidence that they will give.

The procedures are mandatory

- b. In which way is the court involved?

The secretariat of the Court ensures compliance with the time scale. The members of the Court who are assigned to the case review the submissions and other statements and if they appear deficient this will be raised with the parties. If a party fails to provide a statement or a submission required by the procedure the Court may decide to proceed on the basis of the other party's submission only.

- c. How long may they go on for?

The target is that a hearing will take place within 12 weeks of the date of referral. This can be extended in cases where it is necessary to do so in the interests of justice. However the Court generally tries to impose the deadline.

d. Who has to bear the legal costs?

In all proceedings before the Labour Court each party is responsible for their own costs.

Equality Tribunal

- While parties have to bear their own costs, they are not required to have legal representation. In employment cases before the Equality Tribunal, about 50% of employers are represented by an employer body and about 66% of employees are either not represented at all or are represented by a trade union.

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

The procedures are intended to ensure that cases are heard and determined with the minimum of delay. The pre-hearing procedures allow the members of the Court to obtain a good overview of the points at issue before the hearing and that can lead to shorter and more focused hearings

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

The Court produces an explanatory guide to its services which provides guidelines on how to prepare a submission and what it should contain. Informal advice is also available from the Court secretariat to prospective parties who are not represented on how they should present their case.

In the case of equality matters advice, and in some cases representation, is available to claimants from a statutory agency – The Equality Authority. In other cases assistance and representation is frequently provided by Trade Unions.

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?

Generally a party can only rely on arguments contained in their written submissions and on evidence which has been disclosed in the pre-hearing witness statements. If an issue arises which was not known at the time the submission / witness statements were prepared additional material may be admitted but only if the other side would not be prejudiced

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

There are no such measures prescribed in law.

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

There is no specific provision for interest. There is a general provision in most of the legislation which comes within the jurisdiction of the Court for the payment of compensation.

An award of compensation in addition to monies due and owing can be made, in appropriate cases, to take account of the erosion of money values.

Equality Tribunal

In gender discrimination cases, in certain circumstances interest may be payable at a rate currently of 8% per annum.

7. Is the Court entitled to send the parties before a mediator?

In industrial relations cases there is generally a requirement for the parties to attend conciliation before their dispute can be investigated by the Court. In cases under the Employment Equality Acts there is provision for mediation. This is voluntary.

8. Are there procedural regulations for mediation?

The procedure is provided for by law but there are no statutory regulations governing how the process is conducted.

a. Is mediation compulsory?

See question 7.

Equality Tribunal

- Under the Employment Equality Act 1998, a claim may only be referred to mediation if the Director of the Equality Tribunal, or the Labour Court, considers it resolvable by mediation and if neither party objects to mediation. In practice mediation is only offered by the Equality Tribunal where both parties actively choose mediation.
- Mediated agreements are legally binding and may be enforced through the civil courts.

b. How are the mediators selected? In what way is the court involved? Are the judges different from trial judges?

In industrial relations cases the conciliation officers are appointed by the Labour Relations Commission. The officers are Civil Servants who are trained to perform the task of conciliation.

In Equality Cases the mediators are officers of the Equality Tribunal (the Court of first instance). They are selected from amongst civil servants and trained for their task.

The members of the Court are not involved in practice but a provision exists in the Employment Equality Act 1998 which permits the Court itself to mediate.

Equality Tribunal

Mediators are drawn from the ranks of the Equality Tribunal judges (Equality Officers). They volunteer for the relevant professional training and, if they achieve professional accreditation, are then

appointed by the Director of the Equality Tribunal as part-time mediators. They also continue to act in their capacity of Equality Officers (although never on the same case as they had previously mediated). In other words a single individual normally acts as both mediator and judge, depending on the particular case.

c. Is it a confidential exercise?

Yes, a confidential report can be furnished to the Court where the process is not successful and the matter is referred to the Court

Equality Tribunal

Yes. Details of mediated agreements are subject to a confidentiality clause and are not published. Furthermore information disclosed in the course of mediation may not be used in any other forum, e.g. if the mediation is unsuccessful and the case returns to the normal investigative process.

d. How long may mediation go on for? How does it finish?

There is no time limit. It ends when the parties (or one of them) indicates that they wish it to discontinue and have the dispute adjudicated upon. It may also terminate in circumstances in which the conciliator / mediator forms the view that no further effort on his / her part will advance the resolution of the dispute.

Equality Tribunal

The average mediation is concluded within 7 months of the initial referral of a case.

Who has to bear the legal costs?

Parties are responsible for their own costs.

f. What effect does mediation have on the time of prescription?

The case would only be set down for hearing when the mediation / conciliation process terminates.

g. What training in law and procedure is given to mediators?

Conciliation officers are generally trained to secure an industrial relations solution to disputes. Mediators in equality claims are trained in the general principles of equality law and would have a good understanding of this branch of law.

Equality Tribunal

Mediators of the Equality Tribunal act also in their capacity of Equality Officers (judges) and therefore have equal specialist knowledge of discrimination law and the normal procedures.

9. How often do the parties use this possibility?

As noted above, in industrial relations cases conciliation is available in practically all cases. In equality cases the service was only initiated in 2001. It is provided by the Equality Tribunal and not the Labour Court, although the Court can offer to refer cases to it which

come before the Court at first instance (i.e. discriminatory dismissals). In such cases there is a low rate of acceptance. In the case of the Equality Tribunal it is understood that there is a reasonable rate of acceptance of mediation.

Equality Tribunal

Mediation was first introduced in 2001, as a significant innovation in the Irish legal system. Since then there has been a steady increase in understanding and acceptance of mediation. Currently, in approximately 10% of cases before the Equality Tribunal, both parties choose to go to mediation. In a significant number of other cases one party so chooses but the other party rejects mediation.

10. Do you perceive there to be:
- a. Advantages and
 - b. Disadvantages in mediation

The obvious advantage is that the parties may reach an amicable settlement. Even where a settlement is not reached the issues between the parties may be refined to the point where the length of any subsequent hearing by the Court will be shortened.

The only disadvantage is where one or other of the parties is not sincere in trying to find an agreed resolution and the process leads to delay.

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

Please see above regarding conciliation and mediation.

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

No.

13. Are the files managed electronically?

Yes.

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

No other measures occur.

15. What is the number of:
- a. cases
 - b. Judgements of first instance *and*
 - c. Appeals

For year 2001-2002 the figures are as follows:

Total Number of Cases: 590

First instance: 382

Appeals: 208

These are total figures. They are not broken down relative to the workforce.

At the National Court:

In 2002:

- 309 employment equality claims were referred at first instance to (plus an additional 998 claims of discrimination in relation to access to goods and services). Of these 62 cases were referred to mediation (more than one in 6)
- 510 employment equality claims (including one case covering 444 individuals) were decided by the Tribunal (plus an additional 137 claims of discrimination in relation to access to goods and services). A further 22 legally-binding mediated agreements were concluded.

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

Practically none.

17. How many disputes are settled by arbitration?

None.

II. Collective (class) action.

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

There is no express provision for class actions although in cases where collective issues arise (for example claims for equal pay by a grade or category of workers) the parties generally agree to identify a representative claimant and a representative comparator and to agree that all of the claimants are engaged in like work inter-se. Hence, whilst there may be a number of individual claims the outcome of the sample case will be decide all cases.

2. Who are the Parties to these procedures?

Usually employers and trade unions

3. Which courts are competent?

The Labour Court.

Equality Tribunal

The Equality Tribunal is competent to hear collective actions at first instance.

4. What effects does their decision have?

They are binding in respect of all claims covered by the determination.

For whom is this decision binding?

Only on those claimants expressly covered by the claim.

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?

There are provisions by which a trade union can apply to the Court to have terms and conditions of employment fixed in cases where the employer will not engage in collective bargaining. In such cases there is no minimum membership requirement although the level of membership is a factor which will be taken into account by the Court.

Equality Tribunal

- Under the Employment Equality Act 1998, any person who is affected by a collective agreement may refer such agreement to the Director of the Equality Tribunal if they claim that a provision of that agreement contains either discriminatory pay provisions or discriminatory provisions in relation to access to employment, conditions of employment, training or experience for employment, promotion or classification of posts. Trade unions can and do support, or act on behalf of, such individuals.
- Where such referral is made, the Director is required to identify which (if any) provisions of the agreement are null and void because of their content (as above) and may if she thinks it appropriate provide guidance to the parties on alternative appropriate non-discriminatory provisions.

- The Director's decision may be appealed to the Labour Court.

7. Who has to bear the cost?

Parties are responsible for their own costs.

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

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?

In the cases in which they operate in Ireland it is difficult to see how they could be otherwise dealt with without a multiplicity of hearing involving the same submissions and evidence.