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

1. This is of course a very general question. For the Swedish Labour Court it must be stressed that the main mechanism to facilitate the hearings is the preparatory phase of the trial.

2. Yes, in cases where the Labour Court is first and last instance the parties (those are the most important ones; in these cases always organisations on the labour market) have an obligation to negotiate which each other before the case is filed in the court. This may very well be described as a mandatory pre-trial procedure. So far, the court itself is not involved at all. This phase may go on for a considerable time depending on the circumstances (6-12 months). The parties themselves will have to bear the legal costs during this phase. These negotiations do not affect the time of prescription.

3. No.

4. No.

5. Yes. If the parties do not comply to the procedure decided by the court, e.g. by changing position several times, the court may order them to decide their position and evidence at a certain date, after which no further change is admitted.

6. This is regulated in the 1975 Interest Act. The interest rate is 8 % over the reference rate of the Swedish Central Bank, which at present is 4.5 % Consequently, the interest rate is 12.5 %.

7. No.

8. When the case is filed, the trial starts with a preparatory phase. This procedure has two important functions: 1. to make the final hearing efficient and exhaustive and 2. to have an opportunity to settle the dispute (this function is specifically mentioned in the 1942 Legal Procedure Act). At this stage the procedure is both written and oral. So after a written procedure there is always a formal preparatory meeting where the case is heard and the parties are requested to clarify their views on the issues and what evidence will be given etc. At this meeting, the court is normally very active. Such a meeting may typically last for a couple of hours. – This mediation is not compulsory, but is in fact initiated by court in almost all cases. The preparatory meeting is mostly chaired by the professional judge who in the end also will be one of the trial judges.
The mediation is confidential: it is formally not part of the preparatory meeting and is not open to the public. The legal costs will be borne by the parties; i.e. if the dispute is settled they usually have no claims on each other, and if no settlement is agreed upon normal rules apply when the case is decided by the court.

9. See item 7-8.

10. There are really no disadvantages in the mediation chaired by the court, only advantages – mediation is very often successful.

11. Yes, see item 7-8.

12. Yes, a judgment of first instance means that a party may have some degree of execution even if the judgment is appealed against. However, the court of second instance may change this if a demand is made by the defendant.

13. Yes, the Labour Court has a recently installed electronic file system.

14. There is at present no on-going work in order to change the organisation or function of the Labour Court.

15. The jurisdiction rules mean that many labour law disputes are dealt with by the 80 District Courts (cases mainly where the employee is not member of a trade union). Unfortunately, there are no statistics making clear the number of these cases. What is known is only how many cases are appealed to the Labour Court (around 130 per year).

The Labour Court with its nation-wide jurisdiction receives around 400 disputes in all every year. Around 40 % of these are cases which are appealed from the first instance, the District Courts. The others are cases which are filed in the Labour Court as a first and last instance. The total number of cases in the Labour Court is (very roughly) around 10 per 100 000 employees.

16. Around 10 % .

17. There are no statistics about this, and there never will be since arbitration is confidential. Secrecy is probably the most important reason why arbitration is chosen in some cases. This form of settlement is chosen in some individual employment contracts, especially concerning managing directors and the like in the private sector. Arbitration clauses also exists in some collective agreements between central organisations, e.g. for

disputes concerning certain wage rules of the agreement. It is almost impossible to estimate how many arbitrations are going on every year. The total number is probably rather low.

II. Collective (class) action

1. Yes, since 1 January 2003 collective action is possible in private law cases according to the 2002 Class Action Act. However, the Act is not applicable on labour law disputes, i.e. any dispute which affects the relationship between employers and employees.

The reason why labour law disputes are excepted is that most of them have since long been handled in a kind of collective action system according to Labour Law Disputes Act. In such disputes labour market organizations are entitled to bring cases concerning any number of members to the Labour Court. These organisations have a legal right to represent their members in these disputes in the Labour Court as a first and last instance. Other cases – in practice cases where an employee is a non-member – are handled by the district courts as a first instance, with the Labour Court as a second and last instance; in these cases no class action rules are applicable. - *What is said below concerns only the aforementioned cases where an organization has a legal right to represent its members in the Labour Court as a first and last instance.*

2. In the Labour Court, the parties are generally organisations on both sides of the labour market. If the judgment is to be legally effective directly on a person or a company, that person or company must also be a party on the defendant side. A person or a company on the plaintiff side who is represented by an organisation is not formally a party in the trial, but the decision has the same legal effect as if that had been the case.

3. This concerns only the Labour Court (cf. above).

4. The decision of the Labour Court has the same effect as any other court decision as far as the parties are concerned. Hence, only the “formal” parties are bound by the decision. In some disputes, only the organizations are parties in the formal sense. In those cases the members of the organization will not be formally bound by the decision, but in practice the decision means that the dispute is decided also as far as they are concerned.

5. See above (item 4).

6. Trade unions can bring disputes involving employees to court. If the case in fact relates to one or more employees they are in general specified. But this is not necessary if the dispute concerns the “abstract” meaning of a collective agreement. Such a dispute may have a solely principal character.

7. As far as costs are concerned, general rules are applicable. The losing party (parties) will have an obligation to pay the costs according to the decision made by the court. If the “formal” parties are organizations only, the losing organization will have to pay the cost (members of the organization are not directly affected). Very often however, an employer

and his organization are found on the defendant side as “formal” parties; in such cases both will have to pay the costs if they lose the case.

8. The fact that the case is filed at the Labour Court means that no further prescription time is running.

9. There are no public procedures leading to out of court settlements. But the court can appoint a mediator with the aim to facilitate such settlements. Very often the court itself takes part in negotiations leading to out of court settlements.

10. The “class action procedure” for labour law disputes in Sweden is part of the collective system which is founded on the fact that the degree of unionisation is very high (around 80 %). For an individual member - an employee or an employer – it is a very safe system which serves above all as a kind of private legal aid for labour law disputes. It is difficult to identify any serious disadvantages with this system. It should be added that the individual member naturally has the possibility to conduct the trial on his own if he does not want the aid of his organization – the legal representation of the organization is voluntary.