

**Tenth Meeting of European Labour Court Judges
Stockholm, September 2, 2002**

**Lay Judges
Questionnaire**

AUSTRIA

**General Reporter: Judge Peter Clark Employment Appeal Tribunal,
London, Great Britain**

**National Reporter: Dr. Gerhard Kuras
Supreme Court**

- 1 Does your Appellate Labour Court (ALC) comprise of:
- (a) a professional judge or judges only?
 - (b) lay judges only?
 - (c) the tripartite model; ie professional judge(s) plus two (or more) lay judges?

Preliminary remarks:

One of the main points of the Labour and Social Security Act (Federal Law Gazette No 1985/104) was to streamline the existing scattered competences by integrating all kind of labour jurisdiction in the ordinary court system but to maintain special benches and procedural provisions.

In general there exist four levels of courts, where civil matters are adjudicated; ie the district court, the courts of the federal provinces, the higher regional court and the Supreme Court in Vienna.

In labour matters we have three-levels, ie

the Courts of the federal provinces –only Vienna has got a separate court, the Labour and Social-Security Court of Vienna-,

the Higher Regional Courts and the Supreme Court in Vienna.

So we have not just one “Appellate Labour Court (ALC)”.

In the first instance there are the Courts of the federal provinces . In Labour and social Security matters there are special Benches, which are composed of one professional judge as presiding judge and two lay judges, coming from the ranks of the employers and employees

In the second instance the Higher Regional Courts have jurisdiction. The Higher Regional Courts decide with three professional judges and two lay judges coming from the ranks of employers and employees.

The third instance is the Supreme Court in Vienna. Now there are two benches which adjudicate labour matters. These panels of judges consist of three professional judges and two lay judges (Section 11 of the Labour and Social-Security Act). In some exceptional cases the so called Stenghtened Senat has to decide, which comprise seven professional judges and four lay judges.

When adjudicating labour law matters the courts of the first instance have to add in their designation “acting as labour and social-security courts” while the courts of the second instance and the Supreme court add “concerning cases under labour and social security law”.

Each case in labour disputes has to be brought to the Courts of the federal provinces acting as labour and social security courts. The appeal (called “Berufung”) goes to the Higher Regional Courts. The appeal against the decision of the Higher Regional Court has to be brought - if allowed at all - to the Supreme Court. So I assume that “Appellate Labour Courts” in the sense of the question are the Higher Regional Labour Courts in the second instance and the Supreme Court in the third instance “concerning cases under labour and social security law”.

In both kinds of “Appellate Labour Courts” - as mentioned above - we have a “tripartite model”.

2 What is the composition of your first instance Labour Court?

See answer to question 1. One professional judge and two lay judges, one from the side of the employers and one from the side of the employees.

3 Are there any plans or proposals currently in place to alter the composition of your ALC? Is so, what? For how long have the present arrangements been in place?

Comment:

There is a new statute. In procedures initiated after the 31st December 2002 all procedural decisions or interim injunctions may be made without lay judges.

The “tripartite model” is in place since 1896. The idea to have labour disputes decided by special courts with the participation of representatives of employers even dates back.

4 If lay members do sit in your court with professional judges:

(a) are there any types of appeal on which professional judges alone

- (i) may or
- (ii) must sit without lay judges?

(b) are lay judges required to adjudicate on questions of law only, or on questions of fact/mixed law and fact as well under the terms of the ALC’s jurisdiction?

(c) can the lay members outvote the professional judge in decision making?

Comment:

Question a: In general no. In every case and appeal we have the participation of lay judges. Only in some procedural questions and a few situations the professional judge(s) decide without the lay judges.

So for example in the first instance the professional judge may make the first hearing for settlement of the case in compromise without participation of lay judges; the professional judge is also allowed to make an oral hearing –no decision- without lay judges, if one lay judge does not appear and both parties agree. There are also some procedural decision, which may be made without lay judges.

- In the Higher Regional Court and the Supreme Court professional judges may decide without lay judges only if it is a remedy against a decision taken solely by professional judges.

Question b: In general: The second instance - Regional Labour Court - is responsible for questions of facts and questions of law and the lay judges decide- with the professional judges - on both questions. The third instance - Supreme Court - is only responsible for questions of law; so lay judges decide in this instance - like the professional judges - only on questions of law.

So in general we can say that in the second instance lay judges adjudicate on questions of facts and questions of law, in the third instance lay judges adjudicate only on questions of law.

Question c: Every judge - either professional or lay judge - has the same vote. Lay judges have the same legal powers as the professional judges. So lay judges can outvote the professional judge in decision making where they are more in number than professional judges; especially in the first instance where we have one professional judge and two lay judges.

5 Is there any requirement that at least one lay judge sitting on the panel has particular expertise in a given type of case, eg discrimination cases (race, sex, disability)?

Comment:

No. Like the professional judges lay judges need not to have particular expertise in a given type of case.

6 Is there a policy of appointing lay judges from each of the social partners? If so, is it the practice to draw one member from each background to sit with the professional judge on each appeal?

Comment:

As said before - see question 1 - the lay judges have to come from the ranks of employers and employees respectively. This must be effective in every case and appeal in labour matters.

- 7 How are lay judges selected for appointment; is it by open competition, recommendation by interested bodies; administrative appointment or otherwise?

Comment:

Most lay judges are elected by interest bodies of the employers and the employees. Some are appointed by the responsible authorities of the Federal Republik, the federal provinces and the municipality where the courts of the federal provinces are located.

- 8 For what period of time are lay judges appointed? Are such terms renewable? In what circumstances, other than age or ill health may they be removed from office or their appointments not renewed?

Comment:

Lay judges are appointed for a period of five years. The appointment is renewable. The lay judge may resign. A lay judge can be removed from his office if he is no longer member of the group of employers or employees, which elected him or if his election was irregular or in the case of gross breach of his duties as a lay judge, ie if he does not appear to the hearings.

It is a similar procedure like for professional judges.

- 9 What training in law and procedure is given to lay judges of the ALC?

Comment:

The statute does not demand a special training for lay judges but they should have expertise. If a person is appointed to be a lay judge in one of the instances of the labour courts the proposing body gives some special training in law and procedure to these persons.

- 10 How often do the lay judges disagree? Is it often, sometime, rarely? Do they see their role as that of independent judge or representative of 'their' side of industry?

Comment:

There are no statistics to which extent lay judges disagree. In my opinion it is rarely. Lay judges in general see their role as that of an independent judge and not as a Representative of "their" side of industry.

11 Do you perceive there to be

(a) advantages and

(b) disadvantages in sitting with lay colleagues in the ALC? If so, what are they?

Comment:

I think to sit with lay members is an advantage. They have a lot of experience. This helps to make the right decision. The involvement of lay judges also strengthens the confidence of employers and employees in labour court jurisdiction.

12 Overall, from your experience do you believe that the administration of justice in your ALC is improved or impaired by the presence of lay judges as opposed to professional judge(s) sitting alone? Please say why you reach your conclusion.

Comment:

Despite the fact, that the presence of lay judges also implies some administrative and financial burden I think that in general it improves the labour jurisdiction in all three instances (see answer to question 11) .