

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

**Lay Judges
Questionnaire**

SWEDEN

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

**National Reporter: Judge Michaël Koch, President
Labour Court, Stockholm**

1. The Swedish Labour Court comprises of the tripartite model.

Before describing this more specifically, I would like to point out that the Swedish Labour Court is not only an appellate court for cases which are appealed from the District Courts. It is at the same time a one-instance special court for labour law disputes arising within the organized sector of the Swedish labour market. Around 80 % of all employees are members of a trade union, and the percentage is much the same on the employer side. Disputes between such organizations or members of them do in practically all cases fall within the jurisdiction of the Labour Court as a first and last instance. Other disputes have to be dealt with by a District Court and may be appealed to the Labour Court as a second and last instance.

In most cases, the Labour Court consists of seven members. Only two of them are professional judges (the chairman and the vice-chairman). The so-called third man is usually a civil servant with special insights in labour market problems; he need not be a lawyer but may nevertheless be considered as a professional judge.

The other four members are of course the lay judges, two from each side of the labour market.

In some cases the Labour Court consists of three members only. This is so in cases where the dispute and the legal issues are uncomplicated.

2. As I have already indicated, there are no (special) first instance Labour Courts. The cases appealed to the Labour Court are in the first instance dealt with by the District Courts (there are 80 of them). These courts are part of the general court system. They include lay judges in criminal cases only, i.e. never in private law disputes. A District Court dealing with a labour law dispute usually comprises of three professional judges.

3. The Labour Court's composition has been unaltered since 1929, when the Court was established. At present, there are no plans to alter the composition.

4. There are no types of appeal on which professional judges must sit without lay judges. However, in some cases they may sit without lay judges, namely in situations where the dispute does not concern labour law issues: procedural matters, legal aid issues etc. If the Labour Court comprises lay judges, these are required to adjudicate on all questions.

Every member of the Labour Court has one vote. This means that the four lay members can outvote the three professional judges. This has happened only once. This was in 1947, when the four lay members had a mutual interest to outvote the professional judges. The case concerned the right to be a member in a (minority) organization. The judgment was clearly unlawful, which was later stated by the Parliamentary Ombudsman. When a similar issue was brought to the Labour Court, there was an unanimous judgment according to the view of the professional judges.

5. There is no requirement that at least one lay judge sitting on the panel has particular expertise in a given type of case. It should be remembered that these members are lay judges only in the legal sense of the word; they are in fact experienced experts in most matters arising in the labour market.

6. As already indicated, the lay judges are drawn from each of the social partners. There is a requirement that the court is always comprised of the same number of members from each side.

7. The lay judges are selected for appointment by recommendation by the social partners (the labour market organizations respectively). Just like the professional judges, they are officially appointed by the government. As all judges, they have to swear a judicial oath.

8. The lay judges are, just like the professional judges, appointed for a period of three years. The terms are renewable. In other circumstances than age or ill health, their appointments are normally renewed. In practice, most members sit for many years. However, the renewal presupposes that the member is nominated by the organization. It may occur that an organization for some reason does not repeat its nomination of a certain member.

9. No training of law and procedure is given to lay judges. It is up to the professional judges, primarily the chairman, to explain matters of law and procedure. In practice, the lay members are highly knowledgeable in labour law matters even if they are not lawyers (most members of the employee side are not).

Most of the lay members are leading officials of their respective organisations. This means that they are very experienced in problems relating to labour law disputes.

10. About 85 per cent of all judgments of the Labour Court are unanimous. In the remaining 15 per cent of the cases, it is mostly one or two of the lay members who disagree. The lay members certainly do not see their role as that of representative of "their" side of the industry. On the contrary, they obviously act as independent judges. Of course, different lay members have different experiences, which may affect their general outlook on labour law issues. This means that a disagreement is in most cases in favour of the members own side of the industry. However, this should not be overstated. It sometimes happens that a lay member disagrees in favour of "the other" side. I remember one case concerning employment protection where three members disagreed on the judgment: the third man and one lay member of each side. However, such situations are not common.

11. In my view, there are only advantages in sitting with lay colleagues in the Labour Court. When the Labour Court was created almost 75 years ago, there were mainly two reasons for this: there was a need for a procedure that was quick (one instance) and expert (lay members). It follows from this that lay members were made part of the Labour Court in order to reinforce the court. There may have been yet another motive for this: the acceptance in the labour market of the decisions of the court ("one should be judged by one's equals"). However, I do not believe that this was an important issue. Expertise was the main reason for having lay judges. This may look as a paradox: is not lay judges the opposite of expert judges? The answer to this is of course that the lay judges of the Labour Court are not lay judges in the same sense as lay judges in a District Court. In the general court, no special qualifications are needed for a person to be appointed lay judge; the idea is that common sense is enough. The lay judge of the Labour Court may rather be considered as a specialist member.

In which cases are the advantages with lay members in the Labour Court most obvious? I would like to mention two examples.

In cases relating to interpretation of a collective agreement (an important task for the Labour Court) it is crucial to know how negotiations are made in practice. The principles of interpretation are closely related to views on how the parties should behave during negotiations, e.g. which party should have informed the other party about the purpose of a certain phrase proposed to be included in the agreement etc. In judging such situations it is an enormous advantage that the Court comprises of members with their own experience in this field.

Another example is a case where the Court has to apply a labour law of a rather indefinite content. Some legislation in this field gives considerable freedom for the court to decide what is fair in a given situation. The best example is the 1982 Employment Protection Act, which means that an employer may dismiss an employee only when there is an "objective reason". In cases concerning this rule, it is obvious that views held by people with long experience of labour market issues have been important for case-law of the Labour Court. It may be mentioned that this was even more obvious when the legislation was new; there was at that time an obvious discrepancy in outlook between the District Courts (no lay members) and the Labour Court. Nowadays, with many years of published Labour Court case-law, the District Courts adjudicate employment protection cases in much the same way as the Labour Court itself.