

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

The Role of Collective Bargaining

**Questionnaire
General Reporter: Judge Harald Schliemann,
Federal Labour Court of Germany**

ICELAND

**National Reporter: Judge Eggert Óskarsson
President of the Labour Court**

A. The legal framework of collective bargaining

Please describe the legal framework for collective bargaining in your country:

1. **Constitutional provisions**. Does your country's Constitution or Basic Law include the right to collective bargaining? If it does, please quote the relevant provisions.

According to the Icelandic Constitution, Article 74, people are entitled to form associations for any lawful purpose, including political groups and trade unions, without having to seek prior authorization.

2. **Legislation**:

- a. Please, indicate if collective bargaining in your country is regulated by:

- i) the Labour Code or a general labour law (e.g. the Workers' Charter in Spain)
- ii) a law on collective bargaining

ACT on Trade Unions and Industrial Disputes No. 80/1938 with subsequent amendments (No. 70/1954, 10/1983, 91/1991, 75/1996 and 20/2001).

Article 5. Trade unions are legal contracting parties concerning the wages and terms of their members, provided the union concerned has determined in its statutes to let its activities extend to such matters.

A separate Act, No 94/1986, applies to collective agreements in the public sector.

- iii) a framework (central) agreement

- b. If your country does not have a law on collective bargaining, is this subject dealt with under civil law? (for example the Civil Code or the Code on Obligations)

c. To what extent have the labour courts played a decisive role in framing the right to collective bargaining and in determining the legal effects of collective agreements?

There has not been a mentionable disagreement about the right to collective bargaining according to the ACT on Trade Unions and Industrial Disputes. The Labour Court has confirmed that the right to collective bargaining depends on that members of the concerning trade union are working for the employer in question, ref. to Article 5 of the above-mentioned ACT.

On the other hand The Labour Court has had to solve many disputes concerning the right to collective bargaining in the public sector according to the ACT no 94/1986 on the Collective Agreements of Public Servants.

3. **Types of collective agreements:**

- a. Are there differences or distinctions between “collective agreements” at national, regional or sectorial level (the German “Tarifvertrag”), i.e. collective agreements whose parties are trade unions and (associations of) employers; and “enterprise collective agreements” at the enterprise level (the German “Betriebsvereinbarung”), i.e. collective agreements between the works council and the enterprise?

Trade unions are legal contracting parties concerning the wages and terms of their members according to Article 5 of the ACT on Trade Unions and Industrial Disputes No. 80/1938. Agreements between individual workers and employers are invalid to the extent to which these are in conflict with agreements between a trade union and the employer provided that the union has not approved of the agreements, according to Article 7 of the above-mentioned ACT. It is though common that agreements are made by trade unions on behalf of their members on enterprise level either as part of the sectorial collective agreement or as a separate collective agreement. Besides it is permitted in most collective agreements at national, regional or sectorial level that the enterprise and the employees make a special agreement in some matters. The negotiation about this is decided in the concerning collective agreement and usually under the lead of trade union shop steward in the workplace. The legal effects of such agreements are also different because the trade union is not a formal contracting party.

- b. Are there any other types of collective agreements in your country? Please specify.

4. **Conditions of validity of a collective agreement:** Does the law provide for certain requisites to be filled for a collective agreement to become legally binding, such as the following:

- | | |
|--------------------------|-------------------------------------|
| a. Governmental approval | <i>No</i> |
| b. Registration? | <i>No</i> |
| c. Publication? | <i>No</i> |
| d. Other? | <i>Yes, it shall be in writing.</i> |

Act. Nr. 80/1938, art. 6 All agreements between trade unions and employers relating to workers' wages and terms shall be in writing, specifying the period of validity and respite for notice of termination. Alternatively the period of validity shall be one year and respite for notice of termination shall be three months. In case notice of termination of an agreement be not given within the respite this will be considered to be extended for one year, unless an alternative arrangement be fixed in the agreement itself. Notice of termination of an agreement shall be in writing.

For a collective agreement to be valid, is its conclusion enough?

Act no. 80/1938, art. 5, When a collective agreement has been signed by the competent representatives of the contracting parties, it shall be valid from the date of signature unless otherwise agreed, unless it is rejected in a secret ballot by a majority of the votes cast, with the participation of at least one fifth of those on the voting roll or membership register within four weeks of the date of signature.

5. Effects of a collective agreement: To whom are collective agreements and/or enterprise collective agreements or work agreements binding or compulsory? Are they related to union membership and/or to the association of employers? *Not if it is not explicitly stipulated in the text of the agreement. National, regional and sectorial collective agreements have “erga omnes” effect according to the Working Terms act No. 55/1980, with subsequent amendments.*

Article 1

Wages, and other working terms agreed between the social partners shall be considered minimum terms, independent of sex, nationality or term of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts made between individual wage earners and employers on poorer working terms than those specified in the general collective agreement shall be void.

6. Extension of collective agreements: In your legal system, is it possible to extend a collective agreement to non members of the employers' association that has signed it so that it can have *erga omnes* effects in a branch of industry or a sector *Yes, ref. question 5.*

a. Is extension frequently or rarely used in practice? *It is automatic.*

b. When extension is possible:

i) what procedure has to be followed for an agreement to be extended to third parties? *Ref. question 5.*

ii) what is the usual coverage of an extended collective agreement (i.e. a province, a region, the whole state)?

Ref. question 5.

B. The parties to collective bargaining

7. Who are the parties of collective agreements? Trade unions? Associations of Trade Unions and /or works Council (the German “Betriebsrat”) on the one side? Employers, enterprises, associations of employers on the other side? Who else?

Trade unions or associations of Trade Unions are parties of all collective agreements. On the employers side it is either associations of employers or enterprises.

8. Workers’ representation by a trade union:

a. Is trade union representativeness an important issue in your country? *Yes, but union representatives at enterprise level do not have a bargaining powers in their own right. They have to be specially appointed by the union.*

If so:

i) how is the representativeness of a trade union for collective bargaining purposes determined at the different bargaining levels (i.e. the establishment, the enterprise, the industry or branch of economy, an occupational group or at national central level)?

It is for the relevant union to decide in accordance with the statutes of the union. According to act no. 80/1938, art. 5, the negotiating committee or representative who acts on behalf of a contracting party when a collective agreement is made shall have a mandate to present proposals for an agreement, take part in negotiations and sign collective agreement on behalf of the trade union or federation involved.

ii) what procedures are available to settle disputes, when trade union representativeness has been challenged? Are Labour Courts competent to settle disputes on union recognition or union representativeness for collective bargaining purposes? Is this an important issue in your country?

The Icelandic Labour Court is competent to settle disputes on union representativeness for collective bargaining. According to Act no. 80/1938, art. 44, it is the function of the Court to pass judgments in cases arising on account of charges concerning violation of the Act and violation of collective agreements and also in cases of dispute concerning the interpretation or validity of such agreements. The role of the Labour Court is similar according to Act. No. 94/1986 on the Collective Agreements of Public Servants

b. Where there is trade union multiplicity:

i) how organized is the workers’ representation for collective bargaining purposes?

About 86% of the Icelandic workforce is organized.

- ii) can minority unions claim collective bargaining rights? Is this an important issue in your country? Does your country have a case law on this issue?

In principle, yes. There is no requirement for a majority. On the other hand there has long been a practise that collective agreements contain a priority clause, which limits the possibility for minority unions to gain members. Therefore minority union's claims for bargaining rights have not been an important issue.

- iii) can a union join an existing collective agreement to which it has not originally been a signatory party? If it can, what rights does a union enjoy as a result of its adhesion to that agreement. For example, is the union recognized as *locus standi* before a tribunal to engage in litigation in case of breach of a collective agreement?

*A union cannot automatically join an existing collective agreement. In this case the union would typically represent its members on the grounds of their individual rights
Federations of trade unions and employers' associations proceed with cases before the Labour Court for and on behalf of their members, Article 45, act no 80/1938.*

- c. Can a union represent non unionized workers for collective bargaining purposes? *Not directly.*
- d. Can a collective agreement be applied to non union members? *Yes*
- e. What procedural rights and obligations are granted to Trade Unions that have signed a collective agreement? For example
- i) can they initiate litigation on the workers' behalf? *Yes*
- ii) can they initiate litigation on their own behalf? *Yes*
- iii) others *Generally not*
- f. What procedures and recourses are available in your country for unions or employers to demand the enforcement of an agreement by the other party?
Litigations either before the Labour Court or the Civil Courts.
- g. What remedies are available when it is held that one of the parties is in breach of a collective agreement by which it is legally bound? For example, can a labour court impose a fine or issue an injunction in these cases?

Act no.80/1938. Article 65

The Court may order parties to pay damages, fines and costs in accordance with customary rules. In determining the amount of damages regard may be had for the culpability of the violation.

The judgments and decrees of the Labour Court are subject to execution. The Court will decide upon the respite for execution.

9. **Work agreements concluded by a non union body:**

- a. For your country, please indicate whether there are legal or collectively agreed rules that provide for the representation of all workers, at enterprise or establishment level, by a body elected by all the workers of the enterprise or the establishment whether unionized or not (e.g. works councils, enterprise committees, shop stewards, staff delegates). If such bodies exist, how are they appointed or elected?

Act 80/1938. Art. 9. ... At each place of work where at least 5 persons are employed the executive committee of the local trade union in the trade concerned are entitled to nominate 2 persons to act as shop stewards out of the group working at the working place. The employer shall approve one of them in the capacity of trade union shop steward at the work station.

In addition most collective agreements contain rules about election and appointment of shop stewards. They are to be elected by the union's members at the work place and appointed by the union for two years at the time.

- b. What kind of relationship - legal or *de facto* - exists between these bodies and the unions?

Ref. question a.

What specific competences do these bodies have, and to what extent can they negotiate collective agreements, or other legally binding agreements such as work agreements (*Betriebsvereinbarung*)?

The shop stewards do not have competences to negotiate collective agreements. There are no other bodies at enterprise level.

- c. Are enterprise collective agreements or work agreements common in your country?

Ref. question 3

- d. Do these agreements include rules or procedures to settle disputes concerning their interpretation or application?

Generally not

- e. Can these agreements be enforced before a Labour Court?

Depending it is considered as a collective agreement according to act. No. 80/1938.

If they can:

- i) who can bring litigation before the Court? (e.g. a union, a works council, the individual worker)

The union. In case a federation or union decline to instigate proceedings for their members the party concerned is authorized to file the case himself, but prior to a writ of summons being issued he shall submit evidence of the refusal of the union or federation concerned before the President of the Labour Court. Act no. 80/1938, art. 45.

- ii) what measures can a labour court take to enforce these agreements?
Ref. question 8. g.

C. The role and (political) importance of collective agreements

10. If data are available, please provide information on the following:

- a. The number of collective agreements that are in force in your country;

There is not any reliable data on the number of collective agreements but they are several hundreds.

- b. Their distribution, according with their coverage:

In the private sector the general collective agreements are mostly sectoral or regional for each profession.

- i) sectorial, industrial, and enterprise level agreements;
- ii) national, regional, provincial or local agreements;
- iii) the percentage of the workforce that are covered by collective agreements; *About 86%*
- iv) the percentage of enterprises that are covered by collective agreements.

Most of the bigger enterprises are part in collective agreements either through employers associations or directly. The same also applies to a big part of other enterprises. Due to the erga omnes effect most enterprises are never the less bound by the terms and conditions of the collective agreements.

11. What subjects are generally addressed in collective agreements, or in work agreements concluded with works councils or other staff representation bodies?

- a. Terms and conditions of employment? (e.g. wages, overtime, hours of work, job classification)
Wages, overtime, hours of work, holidays, (not job classification).

- b. Provisions concerning the contract of employment: hiring, probation, discipline, fixed-term contracts, termination of employment, other?

It is a bit different between collective agreements, the enterprise agreements tend to be more detailed. All agreements have provisions about notice of terminations, some mention discipline or contain provisions about fixed-term contracts.

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|---|-------------------|
| c. Health and safety? | <i>Yes</i> |
| d. Training? | <i>Often</i> |
| e. Workers' welfare | <i>Some</i> |
| f. Workers' rights in the enterprise: right of expression, other? | <i>Mostly not</i> |

- g. Trade union rights and facilities to be afforded to union stewards? YES
- h. Settlement of disputes? *Mostly not*
- i. Peace obligation? *No, The Peace obligation is a given premise*
- j. Interpretation and administration of the agreement? *Mostly not*
- k. Procedures for denunciation and renewal of the agreement? *The duration of the agreement*
- l. Other?

12. Which of the above subjects are normally addressed by collective agreements concluded with a union, and which by work agreements between an employer and staff representatives (i.e. works councils or the like)?

Ref. to earlier questions.

13. Which issues are governed only by law and / or are not allowed to be dealt with in collective agreements or work agreements?

None. The law though often contains binding minimum rights.

14. In collective agreements, are the wages and other conditions of employment minimum or standard terms of employment?

Generally they are minimum terms.

D. The role of Labour Courts in the collective bargaining process

15. By what means are collective agreements achieved? (Bargaining, or if not successful, striking, or by taking another industrial action? Mediation? Arbitration?)

Bargaining, mediation, striking

16. Can a labour court stop a strike or other form of industrial action:

- a. While negotiating a collective agreement? *Only on condition that it is illegal*

If it can, how does it proceed (for example, by issuing an injunction)?
With a judgment claimed by the opponent.

- b. Where such action is in breach of the peace obligation? *Ref a.*

17. Can a labour court mediate in a collective dispute? *No*

18. Can a labour court impose binding arbitration? *No*

E. Interpretation of collective agreements by the labour courts

19. Are there rules of interpretation of collective agreements (Interpretation as a <written> law? Interpretation as a treaty? Interpretation with respect to the usual practice?)

There are no special rules of interpretation of collective agreements, only the usual practice.

20. Is there any ranking between the wording, motives, sense of a clause or term in a collective agreement? NO

21. Is it common, allowed or prohibited, that a labour court asks the parties of the collective agreement for their interpretation? *It is not prohibited, but not common in practise*

22. Is a labour court allowed to extend or restrict the rules or terms of a collective agreement? *No, only to interpret*

23. How much or how often (in relation to other cases) do labour courts deal with the interpretation of collective agreements? *Most often*

24. Are labour courts allowed to void a “not interpretable” (i.e. extremely unclear) term of a collective agreement? NO