

Ninth Meeting of European Labour Court Judges

Geneva, 3-4 December 2001

IRELAND

THE ROLE OF LABOUR COURT JUDGES IN THE IMPLEMENTATION OF SOCIAL POLICIES

Questionnaire

General Reporter: Judge Stephen Adler, President
National Labour Court of Israel

1 Labour Court Judges and Social Policy

a) In what areas do judgments of your or other courts in your country pertain to social policy by either implementing or creating policies?

| Possible areas: | Yes | No |
|--|-------------------------------------|--------------------------|
| - freedom of association | <input type="checkbox"/> | <input type="checkbox"/> |
| - collective bargaining | <input type="checkbox"/> | <input type="checkbox"/> |
| - strikes | <input type="checkbox"/> | <input type="checkbox"/> |
| - prevention of collective conflicts | <input type="checkbox"/> | <input type="checkbox"/> |
| - equality at the work place | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| - the definition of "employee" | <input type="checkbox"/> | <input type="checkbox"/> |
| - the definition of who is the "employer" of people performing certain types of work | <input type="checkbox"/> | <input type="checkbox"/> |
| - the application of labour law to irregular, disguised, or ambiguous working relationships | <input type="checkbox"/> | <input type="checkbox"/> |
| - education or occupational training (Yes: vocational training) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| - freedom of occupation and non-competition clauses | <input type="checkbox"/> | <input type="checkbox"/> |
| - work safety | <input type="checkbox"/> | <input type="checkbox"/> |
| - protection of vulnerable groups (such as unskilled people, foreign workers, disabled people, etc). | see below | |
| - other (please describe) | | |

Equality legislation protects individuals from discrimination in work (and in the provision of goods and services, accommodation and certain aspects of education) on 9 grounds: gender,

marital status, family status, religion, age, disability, race, sexual orientation and membership of the Traveller community.

- b) What has been, in general, the contribution of the labour courts in your country to the development of social policy? (Please see under (c) before answering this.)**
- c) Relating specifically to freedom of association, what has been the labour courts' role in developing and/or implementing your country's social policy?**
- d) Describe briefly some labour court judgments which have implemented or determined social policy; if possible, relating to freedom of association, including the protection or encouragement of trade unions and collective agreements.**
- e) Have there been instances in which labour court decisions relating to social policy have been incorporated into statutes, changed by statutes, or adopted by the general courts?**
- f) Is there a connection between social policy and social justice in labour court judgments? Please explain.**

2 Labour Court Judges and Access to Justice

- a) What has been the contribution of the labour courts in your country to effectively ensuring the appearance before the judge on truly equal terms for all parties involved? To what extent is this contribution related to aspects such as cost (for instance, exemption from certain court costs for the financially weaker party); the possibility for workers to receive professional assistance by a lawyer or to be represented by other experts (for free?); the possibility for trade unions to appear in court (on their own behalf, as representatives of their members, and under what conditions if any); and the burden of proof?**

In Ireland employment law disputes are referred to a variety of administrative tribunals – the majority of employment law disputes are heard before the Employment Appeals Tribunal and disputes in relation to discrimination on 9 grounds (gender, marital status, family status, religion, age, disability, sexual orientation, race or membership of the Traveller community) are referred to the Director of Equality Investigations.

In the case of the Office of the Director, there are no court costs. Re representation, 27% of claimants have no representation, 48% are represented by their trade union, 15% by a solicitor and the balance by the Equality Authority, a statutory body which provides information and advice and may provide representation in complaints of discrimination. The choice of representative lies with the claimant. The burden of proof lies in the first instance with the claimant who must establish a prima facie case of discrimination. When such is established, the burden of proof shifts to the employer who must show objective justification,

in the case of alleged gender discrimination, or in other discrimination cases the employer must show

- b) In what manner and to what extent is the labour court able to reconcile careful analysis leading to well-founded and impartial rulings, with the need, strongly felt in the area of labour law and social protection, for a rapid delivery of judgements? (This may include a discussion of issues such as the use of new technologies; “out-sourcing” of certain tasks (formerly) performed by judges; shortening of deadlines; oral procedures.)**

This is a major problem for the Office of the Director of Equality Investigations, because of the rapid escalation of number of complaints (up from 162 in 2000 to over 900 in the year to date). Our main approach has been to protect quality fully but to prioritise certain cases (particularly those related to harassment) and to ensure that the Equality Officers who deliver the judgements are freed as much as possible from having to deal with routine administration.

- c) Do you consider, in this regard, that the requirement of an efficient labour court raises the question for the judge to also develop personal managerial qualities?**

Yes in the sense of management of case load and ensuring that any support staff are supported adequately so as to enable them to perform to their optimum capacity.

3 Labour Court Status and Social Policies

- a) Is the role of your court, or other courts in your country, limited to the implementation of social policy set in statutes? Or do your court’s judgments include judge-made law regarding social policy?**
- b) In your opinion, should labour courts adopt a role of “judicial activism”, especially relating to judge-made social policy?**

4 The Judge’s Personal Condition and Social Policy

- a) What is the role of individual judges’ personal values, philosophy and outlook on life in their judgments? What is their role (personal influence) in deciding social policy issues?**
- b) How do judges learn about social problems, social issues at the workplace and social values? In other words, how are judges trained to deal with social policy?**

The Office of the Director of Equality Investigations has provided training in equality issues, e.g. from specialists in gender and racism studies and has also organised sensitivity training on almost all the protected grounds.

- c) Is this adequate in your view, and how should they be trained?**

Regular updates of such training are required.

5 Lay Judges, Professional Judges and Social Policy

In case your labour courts have professional and lay judges:

a) What is the role of lay judges (public representatives) in implementing and making social policy and deciding issues relating to social policy?

In Ireland there are three courts or tribunals dealing with employment law.

- i) the Employment Appeals Tribunal, which sits in divisions comprising a chairperson who is legally qualified but is not a judge, and two members who are nominated by employer and trade union bodies; This body deals with most employment law disputes except discrimination.
- ii) the Office of the Director of Equality Investigations which deals solely with discrimination disputes; the sole member is an Equality Officer who is not required to be legally qualified.
- iii) the Labour Court which has appellate jurisdiction in discrimination cases and certain other legislation (e.g. under the Organisation of Working Time Act) and also deals at first instance with discriminatory dismissals. This body sits in divisions comprising a chairman who does not require to be legally qualified and two members nominated by employer and trade union bodies

b) What is the lay judges' contribution to the judgement itself, if any? (Would they be able to overrule the professional judge, for example?)

There are no professional judges. Consequently the lay members (in the case of discrimination the sole member) makes a full contribution to the finding.

c) Are the perspectives and ideas of lay judges on social policy different than those of the professional judges?

d) Are there any patterns in the way lay judges decide on matters relating to social policy? For example, do lay judges representative of labour usually vote to implement social rights while lay judges representative of management vote to oppose them?