

**XXth Meeting of European Labour Court Judges
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QUESTIONNAIRE 2

The role of the Court in a labour dispute

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Definition: labour dispute is a conflict or disagreement between employer and employees or between groups (organisations) who represent them. With expression labour dispute we understand individual and collective labour disputes.

Starting points

1. Role of Court (judge) in individual labour disputes is – because of their nature – more active regardless if they are under jurisdiction of specialised Labour Courts, regular Courts of justice or special tribunals.
2. Role of Court (judge) in collective labour disputes is less active, because the parties of collective employment relationships (trade unions and employers organizations) are more autonomous and task of court is above all protection of freedom of collective bargaining and judgements about conformity of collective agreements and industrial actions with compulsory Law.
3. Court decisions (above all of court of last instance) influence on relationship between workers and employers, but also on legislator and parties of collective agreements at explanation, accepting and changing legal norms, arranging individual and collective employment relationships.

Labour law attempts to balance the inequality between the individual worker and his or her employer (economic dependence, subordination, ability to enforcement of rights). For protection of a worker in substantive law there is more compulsory regulations (law, provisions, rules), assuring workers minimal rights.

The worker is in unequal position also within judicial proceedings in comparison to an employer: he or she is less prepared and has fewer experience at performing within formal procedure, he or she has also fewer possibilities to get skilled representative (council, attorney) because of worse economic position.

For equalized position of parties in labour dispute and also for more quickly and efficient procedure, in statutory provisions for labour disputes are engaged specialities, that allow more active role of the judge in advantage of a worker.

QUESTIONNAIRE

This questionnaire is intended to be used as a springboard for national reports dealing with the specific issues of the meeting. I hope that you will use it as a basis for explanation rather than feel confined to the exact format of the questionnaire.

1. Is in your country adopted special act regulating procedure before Labour Courts or Labour Courts apply general rules of civil procedure with specialities for labour disputes? What are main differences in statutory provisions for procedure between labour and civil disputes?
2. Is it true that role of Court (judge) in labour disputes is more active than in civil disputes? What possibilities have Court (judge) in legislation, to fulfil such role?

2.1. Pre-trial procedures and preparation for main hearing

- 2.1.1. Is there a mandatory preliminary procedure for the peaceful (amicably) settlement of dispute (mediation)? What is the role of judge in this proceeding? Can the judge who collaborates in mediation also be the trial judge in later proceeding? Is confirmation of agreement needed from Court (judge)? Is the preliminary procedure in each country's Labour Courts conducted by the judge or registrar or even one or two lay members? Is it done in every case; if not, in which cases and how are they chosen? Whether and to what extent there is written pleadings and documents submitted before the preliminary procedure?
- 2.1.2. If a Court require from a worker to correct or supplement a pleading, could the Court instruct him or her how to rectify the deficiencies of the pleading (incomprehensible or incomplete pleading)?
- 2.1.3. If from the facts alleged in the action (suit) there follow no grounds for the claim (insufficiency of a suit), can the Court requires a worker to rectify the insufficiency of the suit and instruct the worker how?
- 2.1.4. Can the Court requires parties to answer in written statement specific questions in relation to all the circumstances relevant to a decision, to supplement or additionally reason their preliminary statement and to submit additional documents? Is there a time limit within which the parties may file a further statements and explanations? Are the applications and documents communicated at the request of the Court which are submitted after the expiration of the time limit specified by the Court taken into account?
- 2.1.5. If a larger number of actions is filed at a court, in which the claims relies on the same or similar factual basis and the same legal basis, could the Court carry out a sample procedure on the basis of one action and adjourn the remaining procedures? May parties in adjourned procedures dispute material (facts) and legal findings and positions which the Court adopted in the sample procedure?
- 2.1.6. Can a Court decide without a hearing (written procedure) and under what conditions?

2.2. At the main hearing:

- 2.2.1. Settlement hearing, how much can judge reveal (disclose) probable and/or possible final decision (open trial)? Are there any restraints for conclusion of court settlement?

- 2.2.2. Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?
- 2.2.3. In what manner the judge can ensure that all ultimate facts be stated during the hearing, that incomplete statements concerning important facts be supplemented, that means of evidence relating to the parties' statements be adduced or supplemented, and that all necessary explanations be given in order to establish the facts and legal relation in dispute (substantive conduct of proceedings)?
- 2.2.4. Where is border between substantive conduct of proceedings ("help" to worker as weaker party) and partiality of a judge? What are objections of employers (grounds for exclusion of judge)?
- 2.2.5. If after taking all evidence proposed by the parties a Court is unable to establish facts relevant to a decision, could it also take evidence ex officio?
- 2.2.6. Burden of proof: possibility of worker to gain necessary evidences for his or her statements? Can Court impose presentation of evidences (that worker would have to present) also to employer or third party?
- 2.2.7. Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?
- 2.2.8. Can Court ex officio issue temporary injunctions?
- 2.2.9. Is a judge less active, when a worker has an attorney or other skilled representative (i.e. the representative of trade union)?
- 2.2.10. Is activity of Court guided only and solely in advantage of a worker or also of an employer?
- 2.3. How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

3. Role of Court (judge) in collective labour disputes

- 3.1. Parties in dispute:
 - Individual worker or non-organized group employees and employers as parties in collective labour dispute? Distinction between collective dispute and mass actions disputes (question 2.1.5).
 - Duty to inform about the commencement of a procedure other persons, bodies and associations that are holders of rights and obligations about which the court will decide?
- 3.2. Can Court ex officio issue temporary injunctions?
- 3.3. Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?
- 3.4. In which cases and how the court is involved in mediating the collective labour disputes?

4. Role of Court after the end of procedure (protective role)

- 4.1. In what way does the Court monitor respect of courts decisions (execution of judgements and verification of Court decisions in practice)?
- 4.2. How do the decisions of Labour Courts influence behaviour and decisions of employees and employers? Do the decisions of Labour Courts influence reducing the number of disputes?
- 4.3. Do the decisions of Labour Courts have any influence on legislation (implementation, incorporation Court decisions in legislation) or the role of the Labour Courts is just interpretation of the statutory provisions?
- 4.4. Does the Labour Court introduce and explain court decisions and court practice to public?