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GENERAL AND NATIONAL REPORTS

Topic 2

The role of the Court in a labour dispute

General Reporter: Judge Miran Blaha
Supreme Court of the Rep. of Slovenia

GENERAL REPORT

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In this general report I do not reproduce in full all the answers but only those that I find relevant as a basis for discussion. In doing so, I remember that partially similar issues was already discussed in our meetings in:

1. *Geneva 2001, The Role of Judges in the Implementation of Social Policies, general report Judge Steve Adler*
2. *Budapest 2004 Do we need labour courts? general report Judge Michele Blatman*
3. *Helsinki 2008, Decision-making in Labour Courts, general report Judge Jorma Saloheimo,*

The nature of the employment relationship requires a different treatment of labour disputes in comparison with disputes of classic civil contracts. Primarily because the importance of the employment relationship (employment) for the worker: employment provides him a means for living for him and his family, and also social security (health and pension insurance and unemployment insurance). This is a permanent relationship, although not necessarily with the same employer all the time (re-eployment, business transfer, etc.) and for an indefinite period. This requires that disputes must be resolved in merito and as quickly as possible, to which can significantly contributes the

statutory regulations with less formalities and a more active role of a judge in court proceedings. Also, for example, by emphasizing the possibilities of an amicable settlement and the active role of the judge that the parties (particularly worker) shall submit the relevant statements and evidences for proving ground for the decision and to raise the appropriate claim.

Differences in statutory provisions for procedure between labour and civil disputes, what possibilities have Court (judge) in legislation for more active role in procedure

In most countries in labor disputes apply rules of civil litigation, with certain peculiarities, which have either enacted in special law (**Austria, Finland, Germany, Spain, Slovenia, Sweden**) or as part of the law governing civil proceedings (**Belgium, Denmark, Hungary, Italy, Norway**). It should be noted that in some countries (**Denmark, Finland, Norway**) Labour Courts have jurisdiction only to collective labor disputes (disputes under collective agreements), while individual labor disputes settled regular courts.

Proceedings before the Labour Court is fully regulated by a special law in **France** (?), **Israel** and **Venezuela**.

France: rule of unicity of labour instance («The new claims arising out of the same employment contract will be admissible at any stage of the proceeding, even on appeal, without the same being demurrable to a motion based on the absence of an attempt at conciliation »), the venue of the action is easier – a simple application or even the voluntary appearance of the parties before the conciliation board are enough. (no writ nor summons are necessary), the means of representation are wider.

Israel: procedure is partially similar to the general procedure although the procedures that apply in the Labour courts are more flexible and they allow the court to act as it sees best "to achieve justice and a fair trial" also when it comes to the rules of evidence the procedures are more flexible,

Venezuela: labour procedures are held in two hearings: a preliminary one and then the trial. Also, they are governed by the principles of uniformity, oral proceedings, intermediation, concentration, brevity, speed and publicity in every step and stage of the process. Civil procedures do not require any hearings and are governed by the principles of writing, mediation and deconcentration. Labour procedures use judicial mediation as an alternative procedure to solve disputes before trial, while civil procedures do not use mediation. Labour procedures aim for the truth, therefore, they are guided by the principles of priority off reality, probation, probative powers of the judge and value of the evidence of sound critics. Civil procedures aim for the truth as well, but are only guided by the principles of probation, restricted probative powers of the judge and legal fee.

An exception is **Ireland**, where the Labor Court itself shall adopt rules of procedure.

Peculiarities of the proceedings in labor disputes are mainlly not aimed at providing a more active role of the judge, but rather to provide employee easier access to the Court (for example, lower cost or even free of costs, to speed proceedeng, the ability of representation through a union representatives, etc.). To a lesser extent, the specific procedure in labor disputes relate to the possibility of the Court (judge) to stimulate the parties (particularly the employee) to supplement a pleading and to suggests proper evidences, for changing claims and to reach the amicable settlement.

Two remarks:

- from the **Italian** report (same is in **Slovenia**): some rules of civil procedure were changed, relying on rules of procedure in labor disputes, which means that civil proceeding is approaching proceeding in labor disputes;
- from the **Belgian** report: the active role of the judge in labor disputes is not apparent only from the procedural provisions, but from the fact that the norms of labor law (either by law or collective agreements) are aimed for protection of workers and the courts apply and interpret them in favor of the workers ex offo.

Preliminary procedure for the peaceful (amicably) settlement of individual labour dispute (mediation, settlement) and the role of judge in this proceeding

This institute, which certainly requires the active role of the judge, is the possibility of an amicable settlement, after legal proceedings have already started. It is a possibility that either the judge or the court through other court officials trying to convince parties to reach settlement without any overall formal legal proceedings. The advantages of such settlementare are at least two:

- dispute is resolved quickly (usually without complaint, enforceable title)
- parties resolve the real reasons for the dispute, which allows either further cooperation (empoyment relationship) or termination of their relationship in a way that is acceptable to both parties.

Such possibility the parties have already before the dispute comes to litigation, but they either did not use it either the amicable settlement was unsuccessful. Therefore, in the Court proceedings such attempt can only be a formality (for example the **Belgian** report, similarly **Finland**). But this certainly is not the purpose of such a possibility.

Amicable settlement through mediation, after the action has been lodged, as a rule, is intended as an opportunity rather than obligation. **Irish** report states that there is mandatory mediation in collective labor disputes, for **Finland**, the report states that this obligation is determined by collective agreements. I assume that it is an obligation to initiate the process of mediation, which is similar to **Slovenia** procedural requirement for bringing an action in collective labor disputes.

In addition to the settlement in Court proceedings **Slovenia** also knows “court connected mediation” or alternative dispute resolution process. After the action has been lodged, the court proposed the parties to refer the case to mediation. Mediator could be a judge of the Labour Court, but later he can not participate in the proceedings as the trial judge. It is a further possibility of an amicable settlement, but in case it failed, for a fixed period extended judicial process. Such mediation is not an obstacle for the latter judicial settlement. If the parties to mediation reach a consensus on a draft settlement, with which the litigation was resolved in its entirety, the court settlement is concluded and signed before a judge (but not by the judge who acted as a mediator).

In order to achieve an amicable settlement, the judge must necessarily play an active role. As is clear from the **Hungarian** report, the idea is to “judge and parties freely discuss of all circumstances” (of a dispute). This assumes to determine what is the (real) issue, which facts are (legally) important and what evidences are necessary to decide in this case and what applications (claims) are possible: from the facts, evidence and claims raised by the parties (employee and employer), as well as how the judge sees the conflict (dispute). The judge knows the law and jurisprudence, and nothing can be wrong if he draw the parties' attention to the possible outcomes (or potential outcomes) of proceeding, based on information provided to him by the parties. It's hard to talk about partiality of the judge, if he draw the parties' attention to court decisions in similar or even identical cases. From **Italian** report it follows that the judge even suggests draft settlement.

Austria: there is no mandatory preliminary procedure for the peaceful (amicably) settlement of dispute (mediation), but the judge has to try to achieve a peaceful settlement at the beginning of the procedure.

France: Labor court's first duty is conciliation before the conciliation bench («bureau de conciliation»), composed of one employer-labor judge and one employee-labor judge. If the attempt to conciliate fails, the case is sent to a trial bench («bureau de judgment») and the labor court judges who sit at the conciliation hearings may be one of the trial judges of the case. The agreement between the parties is recorded in the minutes.

If the parties are reconciled, even partially, the trial bench will record the terms of the agreement reached in a minutes. If necessary, it will specify that the agreement has been executed immediately in whole or in part before the bench for conciliation. Want of a total conciliation, the claims that will

still be in dispute and the declarations of the parties in relation to these claims will be noted down in the file or in the minutes drawn by the clerk of the court under the supervision of the president.

Germany: there are different possibilities for out-of-court conflict resolution in which may or may not be involved a professional (or lay) judge. If he is, he shall not, under any circumstances, become a member of the Chamber in charge in court proceedings. The conciliation hearing ("Güteverhandlung"), hold by professional judge, is the compulsory first court hearing in labor court proceedings (in the first instance), only weeks after bringing the case to court.

Hungary: no mandatory preliminary procedure, mediation is a form of alternative dispute resolution, but it is not mandatory (a third party, the mediator, assists the parties to negotiate a settlement).

Labour Trial starts with settlement hearing, where the judge and the parties freely discuss of all circumstances. If a settlement is in conformity with the legal rules and the just interests of the parties, the court shall approve it by a judge's order, while in a contrary case it shall refuse approval and shall continue the proceedings.

Israel: no compulsory mediation before starting the procedures, but when a case is open the court contacts the parties and invites them to a mediation/conciliation meeting under the auspices of the Labor Court, with the court registrar or a Labor law lay judge who have broad knowledge in labor law, were trained in mediation and are qualified mediators.

Any case that is opened in the Labor Court is first assessed by a judge's assistant (in same cases the Judge), who is a lawyer, to see how to navigate the case and whether it is fit for mediation or rather to go straight to a preliminary discussion. The judge who attends the preliminary discussion may be the judge that attends the evidentiary hearings.

Italy: Until the year 2010, there was a statute rule prescribing a preliminary mandatory attempt for the settlement of the dispute before a "commissione di conciliazione" (administrative authority). This rule has been modified, and this "attempt" (tentativo di conciliazione) is now only optional. According the same 2010 statute law the trial judge (which in the first hearing had only to attempt an amicably settlement) now must also formulate a proposal to settle the dispute with an agreement.

Norway: Mediation in individual labor disputes is not mandatory, but the court shall at each stage of the case consider the possibility of a full or partial amicable settlement through mediation. Mediation takes place by the court either at a court hearing or through other contact with the parties; the preparatory judge in the case, one of the other judges of the court or a person from the court's panel of judicial mediators may act as the judicial mediator. If the parties reach an agreement during mediation, the settlement may be concluded as an in-court settlement and recorded in the court record (with the same legal effect as a final and enforceable ruling). The parties may also enter into an out-of court agreement, and demand that the matter shall be adjourned from the court.

Spain: In order to avoid litigation, Law establish two mandatory preliminary procedure for the settlement of the dispute: A) prior outside the court conciliation (or mediation), operated by a administrative body that joins together the parties to communicate and to dilute their differences; B) inside the court conciliation, conciliation carried out by the registrar or secretary (chief of the office) of the court the same day fixed for the trial and immediately before this one. When the litigants reached a positive result in the course of the court conciliation, the agreement must be approved by the registrar or secretary (chief of the office).

Sweden: There is no mandatory procedure for the peaceful settlement of dispute when a case has been brought to court, and the Swedish Labor Court is not familiar with the expression "settlement hearing" as a main hearing. The court/the judge are trying to find a settlement during the preparation (most of the preliminary examination is handled by the young, legally trained associate judges in co-operation with the responsible chairman): the judge is obliged to ask the parties if they are interested in trying to reach a settlement and to work for such a solution. If the parties reaches an agreement it is possible to have that agreement confirmed by the court, but that is not necessary.

Venezuela: mandatory preliminary procedure for the peaceful (amicably) settlement of dispute (mediation) consists on a preliminary hearing that takes place in two stages: a judicial mandatory mediation for the parties to find a solution to the dispute and a procedure to heal procedural vices. Preliminary proceeding or preliminary audience is carried out by a specialised professional judge called a judge of proceedings, mediation and execution of labour. This judge chairs the mediation hearing and facilitates and guides the parties to find a solution to the dispute and cannot participate in subsequent proceedings. Confirmation of agreement is needed from the court through a judgement that carries the full effect of res judicata.

Preparation for main hearing – written procedure

The fundamental purpose of the procedure from filing an action to oral main hearing are:

- checking compliance with formal requirements for proceeding with the possibility of eliminating formal deficiencies (if the action has been filed within a time limit in which it should have been filed, any shortcomings with respect to the parties' capacity to sue, the statutory representation of a party, or to the right of the representative to commence a litigation, signature, etc.),
- to ensure an adversarial process by submitting the application (proposal) to the counterparty.

In all countries the Court could requires the elimination of formal deficiencies for proceedings to ensure the fullfilment of procedural conditions. If and when the action met the formal (procedural) requirements, the court considered the case on the merits. Based on the general assumption that parties are those who must provide all relevant facts and evidences to justify their claim, or to oppose them, the main oral hearing shall be fixed. But sometimes further argument or additional evidences are needed, and the court may require the parties to further written submissions. In this part of the proceeding the judge has an active role. The judge already before the hearing actually defines the content of the dispute, because otherwise he could not require the parties to supplement their arguments and present necessary evidence. This indirectly gives parties the opportunity to adapt or modify their arguments, motions and applications, or even change them.

The primary purpose of a substantive examination of the action and require the parties to supplement its content is speeding up the procedure: court (judge) should have obtained before a hearing all relevant evidences and arguments of the parties and ended proceeding in one session. It is not allways necessary that written proceeding prior main hearing will be faster. Because of the adversarial principle, any application by one party must be provide to another party. This could cause problems and complications in the process but also leads to the question of preclusions to allege (new) facts and the presentation of new (additional) evidences.

Interesting is the procedure in **Belgium**, which is sort of a combination of oral and written procedure (interim judgment ant re-opening the debate).

Germany: The court is obliged to inform parties (employees as well as employers) of any incomplete or incomprehensible submission of facts and to request them to supplement or clarify it and to submit evidence if necessary. It especially has to inform the parties of an overlooked legal aspect, in order to give them opportunity to comment on it. The hints and questions of the court must refer to certain facts, declarations and requests, in order to enable unexperienced parties to appropriate pleadings. Further support being favourable to one party is not allowed and the court is not entitled to turn an insufficient suit into a sufficient one.

Hungary: The judge is obliged to inform both parties about the relevant facts and the burden of proof. So if the judge realizes that the facts alleged in the action follow no grounds for the claim, must inform the claiment what the relevant facts are, and that these facts are need to be prooved. The Court can requires parties to answer in written statement specific questions fixing a short time limit.

Ireland: The Court does not have a system of formal pleadings. What is required is that parties file written submissions dealing with the issues of fact and law arising in the case. The Court can direct a

party to make further or better submissions if they are considered inadequate or where they fail to adequately deal with an issue arising in the case.

Israel: basically the judges in Labour Courts advise the parties regarding the existence or non-existence of grounds for suit and whether the correct party is being sued is as well as other factors. The court may, at its own initiative ask questions, order the parties to answer questions with a deposition, request additional documents and more. The court determines the dates for submitting this information if submitted to the court after that set date, the documents will be accepted but the parties will be charged with expenses. This articulates the principle that the procedure serves the essence of the case and not vice versa.

Italy: if the claim does not specify the contest of the request or the grounds for claim, the judge can fix a time limit for the renewal of the invalid claim. The order of renewal of the claim can only show the deficiencies of the suit, but not correct them. Questions about circumstances relevant to the decision can be made by the judge during the trial, and the parties can be asked to submit written statements to supplement their defense, with a deadline (five days) before the final discussion. No new documents, other than the evidence already allowed, can be filed. No statements submitted after the expiration of the time limit specified by the Court are taken into account.

Norway: The court actively and systematically manage the preparation of the case. The court shall give guidance that contributes to a correct ruling in the case based on the facts and the applicable rules. The court shall endeavor to clarify disputed issues and ensure that the parties' prayers for relief and their positions regarding factual and legal issues are clarified. Further, the court may encourage a party to offer evidence, and to take a position on factual and legal issues that appear to be important to the case. The court shall show particular consideration for the need for guidance of parties not represented by counsel. The court shall provide its guidance in a manner that is not liable to impair confidence in its impartiality. The court shall not advise the parties on the position they should take on disputed issues in the case or on procedural steps they should take.

Spain: The registrar or secretary of the court shall notify the claimant (most of the times, the worker) of certain formal deficiencies of the pleading: only those that obstruct or impede the continuation of the proceedings and could require the claimant to submit ex post the not-submitted documents which are necessary to append to the claim; the term for the remedy of omission is four days. In principle, the presentation of other additional documents is not permitted after the claim.

Sweden: If the application doesn't fulfil the formal requirements of an application (stating the claim and indicating the circumstances and evidence in support of it) the plaintiff should be directed to supplement the application. The court could then formulate direct questions in what respects the application is not complete. The same procedure is applicable – mutatis mutandis – when it comes to the reply from the defendant. The Court could require a party, also in writing, to answer specific questions. The material matters of a case though belong to the parties so you could not ask them to actually add something to their point of view, only ask them to clarify their positions.

Venezuela: the Court may guide the worker and require him/her to rectify the insufficiency of the suit and may require the parties to answer in written to specific questions if they aim to rectify the suit, or orally if they aim to proof a fact. The judge may also, using the probative powers invested, demand one of the parties to submit extra documents.

In **Slovenia**, the court may decide without oral hearing, solely on the basis of the writen pleadings if the parties did not dispute the facts and the parties hereby agree in writing. With the consent of the parties this is possible also in **Belgium** (rarely) and **Finland** (often), but it is not possible in **France**, **Germany, Ireland, Italy** and **Denmark**. As a rule it is not possible in **Hungary**, with exceptions in certain disputes, where hearing is not mandatory, but the judge may decide that it will be. In **Austria** it is possible only on basis of a provisional order in cases where the claim does not exceed 75.000 EUR

Main hearing

In all countries – except **Venezuela** and in some exceptional cases in **Israel** – apply the principle that the court shall not decide beyond the limits and extent of the claim as defined by the parties to the litigation. In **Venezuela** the judge might order the payment of non-claimed amounts of money that have been discussed and proved during the procedure. The judge might also dictate the payment amounts greater than intended if they correspond to the claimant by law.

Howevwer, the question is whether and how far the court may influence at the hearing to the plaintiff (usually the employee) to set an appropriate claim or that it will modifies or even changed claim. It appears to be possible to supplement arguments and offered evidence even at the hearing (the most widespread in **Ireland**), but it is not clear whether it is permissible and under what conditions to change claims. All the replies emphasis in the respect the impartiality of a Judge.

In **Slovenia**, the following rules are applied:

The plaintiff may amend the action until the main hearing is completed. The amendment of action shall deem to include the change of identity of the cause of action, the increase of amount of the existing claim, and claiming of relief in respect of another cause of action in addition to the existing one. The action shall not deem to be amended if the plaintiff merely modifies the legal ground of the claim, or reduces the amount of claim, or alters, amends or corrects some of his previous statements, but does not in fact change the identity of the cause of action.

- After the action has been served on the defendant, the amendment shall be subject to his consent; however, the court may notwithstanding the defendant's refusal to consent permit the action to be amended when it considers the amendment reasonable and convenient in terms of definite resolution of the dispute.
- If a worker because of a clear mistake in the complaint wrongly specifies the defendant, the specification of the defendant may be changed not later than the end of a settlement hearing, or if there is no settlement hearing, to adoption of the order for evidence at the first main hearing. A change of the specified defendant shall not be considered an amendment of a complaint.

To take evidence ex officio is not possible in **Finland, Hungary, Italy, Denmark, Sweden and in Ireland** in individual labor disputes. The Court follows the rules of burden of proof. In **Austria** the judge can give advice to the parties and can order evidence: it could also take evidence ex officio in certain cases, but it is not quite common. In **Belgium**, the Court can decide to visit the premises to verify which version of the facts is most corresponding with reality and can also assign an expert to establish some facts and give his expert opinion on a technical matter (e.g. if the dispute concerns the question whether the employee has become permanently physically incapable to do his job, the Court can assign a medical doctor to examine the employee). In **France** Labour Courts are inclined to search for more evidence than what is proposed by the parties. In **Germany** the court may only base his/her decision on what has been submitted by the parties. It can, however, gather evidence ex officio in certain cases, e.g. by ordering the submission of documents, evidence by expert witnesses, "visual inspection" by the court and examining the parties. In contrast, a witness can only be heard by the court, if this has been requested by the party that bears the burden of proof. In **Norway** in its evaluation of evidence, the court may rely on facts that are acknowledged by a party, established facts and the court's general or specialist knowledge and experience, irrespective of whether such facts and knowledge have been addressed by the parties during the hearing. But the court cannot base its ruling on facts in respect of which the parties have not had the opportunity to comment. In **Spain** the judge or tribunal, if deemed appropriate, may hear the opinion of one or more experts in the matter subject to the lawsuit, at the time of the trial or thereafter, for further discovery of evidence In **Slovenia**, the court has an open option: if after taking all evidences proposed by the parties the Court is unable to establish facts relevant for a decision it may take necessary evidences ex officio. In **Venezuela** the labour procedure aims to find truth and justice. To achieve this objective, the labour judge is empowered to guide the process, has wide probative powers and is capable of actively intervening in

every step and stage of the process and may order the review of the libel, drive the proceeding, order the examination of the evidence and interrogate the parties.

The role of judge in cases where the employee acts alone, without a lawyer or other representative, is generally more active in **Finland, Ireland, Israel, Norway, Spain and Sweden**. Otherwise, the general rules of civil procedure apply. In **Slovenia** a party who is not represented by an attorney and who by reasons of ignorance fails to exercise their procedural rights shall be advised by the court of the acts of procedure which they are entitled to execute. If the worker does not have council, the court shall also instruct him concerning rights, conditions and procedure for obtaining free legal aid. From **German** report: "The duties and obligations of the court (judge) towards the parties are independent from wether a party is supported or represented by legally skilled person (e.g. attorney, counsel). In practice, the discussion/explanation of legal matters has to be much more comprehensive if legally unexperienced rather than skilled persons are concerned." In **Austria** the court has to give legal advice, if a party has no attorney or other skilled representative (representative of trade union).

Clearly the courts are more reluctant to "aid" to the employer in a judicial proceeding, even where the employer acts in the process itself, without a lawyer.

Question of border between substantive conduct of proceedings ("help" to worker as weaker party) and partiality of a judge is "a difficult and sensitive area. Where a party (usually a worker) is unrepresented the Court will generally consider itself bound to provide some assistance. However, this must stop short of taking on the role of advocate. There is a delicate balance to be maintained and the Court must exercise its discretion so as to ensure that that balance is maintained" (see **Ireland** report).

If (or because) the emphasis in labor disputes is in an amicable settlement, or court settlement of the case, the border is very thin. Judge when trying to reach a settlement between the parties, acting more as a mediator, which means that the "judge and parties freely discuss of all circumstances of a dispute." If no agreement is reached, the process continues for stricter rules of procedure and not as free discussion of all circumstances.

Role of Court after the end of procedure

It is not a question of respect of judicial decisions (which is assumed), but the question of their effect. It is not even so much a question of applying the provisions of laws, regulations or collective agreements, where such provisions are clear and in line with the acquis. Laws (Statutes) generally provide only minimum rights for workers, for the most part those rights are governed by collective agreements and employment contracts.

It is a question of interpretation of these provisions and their conformity with those norms, with which they must be consistent. In **Slovenia**, for example, the Labour Court must decide in accordance with the Constitution and statutes. Jurisdiction of Labour Court is also assessment the compatibility of the provisions of collective agreements with the Constitution and the statute: both in the collective labor dispute as well in the individual labor disputes. As far as the labor court determines that a provision of the collective agreement is not in accordance with the Constitution or the statute, this de facto intervene in the content of the collective agreement or even amend or change it. Therefore, the judgment of the Labour Courts can play important role in the relationship between workers and employers.

Courts does not specifically monitor how their decisions are enforced and, in particular, their effect – with the exception of **Ireland**. This is more occasional observations and assessment of judges how judicial decisions affect the behavior and decisions of employers and workers, to a lesser extent also in the legislature and probably also on the parties of collective agreement. Indirectly judgments obviously also affect the number of litigation.

Some interesting highlights:

Belgium: “behaviour and decisions of employees and above all employers, are more influenced by court decisions in big companies than in small firms.”

… “after new statute law is introduced or after an important change of statute provisions, the number of disputes concerning these provisions is mounting. Once the interpretation of the new provisions is crystallised by jurisprudence, the number of disputes often drops again. Obviously this shows that the decisions of Labour Tribunals and Labour Courts influence reducing the number of disputes.”

France: “the decisions of Cour de cassation relating to the obligation of security as a result had big influence on the behaviour of employers, fearing to have to pay indemnities for their breach of health and safety rules. It is not sure, on an other side, that Labour Court decisions help reducing the number of disputes on a general level”.

Spain: “The decisions of the Supreme Court have a appreciable influence on legislation; sometimes legislator incorporates a court decision in legislation; sometimes legislator introduces a new rule against a ruling of the Supreme Court.”

Denmark: “It may be assumed that the decisions of the Labour Court have a major influence on the behaviour of employees and employers, in particular since the monetary sanctions that the Labour Court normally imposes on parties violating collective agreements are very high. This applies to both employers and employees.”

Finland: “According to empirical surveys, the decisions of the Labour Court are well respected and usually put an end to the particular dispute, which has been resolved in the ruling. The large body of collective agreements seems, however, to be an endless realm of new disputes.”

Italy: “The decisions of the Labour Courts certainly influence the behaviour of employees and employers; but, owing to to the complexity of the legal system of protection of the workers rights, we can observe an abnormally high rate of uncertainty about the predictability of the outcome of the disputes, and therefore a very high number of them.”

Court its decisions do not specifically comment and explain to the public, except in exceptional circumstances. All the Court has to say, say in the judgment. As is apparent from the **Finnish** report, “there are bad experiences of Courts trying to explain their decisions afterwards and thus getting caught up and public debate on whether a decision was justifiable or not.” In **France** the Cour de cassation issues « communiqués» (press releases) about its main judgments, explaning the content and the scope of the decision.

Role of Court (judge) in collective labour disputes

Comparison in these matters a little more difficult because of different jurisdictions of Labour Courts. Notwithstanding the differences in jurisdictions and in the formal proceeding all counties shared more or less active role of the court (judge) to try to resolve the dispute by agreement between the parties. Either with the pre-trial mediation or settlement hearing (**Hungary**) or so that “Court propose an amicable solution to a dispute of rights in a case at hand” (**Finland**) or so that “Court issue recommendations setting out its opinion on how the dispute should be resolved” (**Ireland**).

In **Norway** the Labor Disputes Act does not contain rules on judicial mediation. The parties are obliged to negotiate before instituting legal proceedings before the Labor Court. However, the court shall at each stage of the case consider the possibility of a full or partial amicable settlement. In practice, a judge may, depending on the case, act as a mediator. The judge will then, as in case of judicial mediation according to the Disputes Act, withdraw from the case. Mediation will be conducted under a duty of confidentiality.

In **Sweden** the Labor court has (as other courts in legal civil proceedings) the responsibility by law to try to reconcile the parties in a dispute. The discussions in order to reach a compromise/settlement can take place in the court under guidance of a judge or just between the parties themselves. If the parties agree, the court may decide (very unusual) to appoint a special mediator outside the court.

In **Venezuela** the Court must participate in the mediation of collective labour disputes in the cases in which a claim has been filed for: compilation of claims for violation of individual rights; violation of constitutional rights; and violation of individual and collective interest. How ever, there have been some extraordinary cases in which the Social Annulment Chamber of the Supreme Court of Justice is involved in the mediation of collective labour disputes without a special claim being filed (for instance, the cases of Coca-Cola, Polar, etc.) with excellent results.

In **Germany** during the whole "order procedure" at all three instances, the aim is an amicable settlement of the legal dispute. The court (judge) is not only entitled, but obliged to try to reach an amicable settlement. This principle requires from the judge a high extent of openness towards the parties. The judge can submit written settlement proposals to the parties and can also arrange a conciliation hearing corresponding to the rules of the judgment procedure.

In **Israel** mediating in collective disputes is an important task of Labor Courts. In many cases of collective disputes, the parties appeal to the Labor Court in order to help them manage the conflict and to manage the negotiations. In collective proceedings that are economic disputes, in which the employees are threatening to strike, the Labor Courts are even more involved with the proceedings than in individual procedures. In collective disputes that have large impacts on the state economy, the court will summon anyone who is necessary to settle the dispute, including representative of employers or employees organizations, government ministers and senior members of the economy, to meetings in the chambers of the president of the National Labor Court. The goal of those meetings is to reach an agreed settlement, or to agree on the procedure in which the negotiation will continue under the court supervision. If the parties do not reach an agreed settlement, the representatives attendance would be required at the discussion.

In **Belgium** collective labor disputes as such are not subject to court litigation but are sorted by industrial action and negotiation. The Social Dialogue department of the Ministry of Employment has created an office of mediators to help at solving collective labor disputes.

In **France** collective dispute are dealed with by High courts (not Labor Courts). These litigations may be submitted to conciliation proceedings. Where the conciliation fails, the dispute is subject whether to mediation or arbitration. On the occasion of strikes, with or without occupation of the firm by the employees, the High Court to which the case is submitted by a party (generally the employer) may decide mediation.

In **Spain** in order to process the lawsuit in a collective dispute, a prior administrative or joint committee attempt to conciliation or mediation is required, but Law does not envisage a special step or activity of court conciliation in collective disputes.

In **Italy** there are no collective labor disputes, but only the special action of trade unions against the employer. The Trade union can take part in the worker's suit asserting that the behavior of the employer infringes the freedom rights of the association. There cannot be disputes about collective agreement or mediation by the Court.

In **Austria** there are two different forms of procedures which may be addressed as "collective(class) actions": a) a works council/employer can file a claim for a declaratory judgement of rights or legal action, and b) association able to be partner of a collective agreement can apply to the Supreme Court for a declaratory decision. In both cases this must be relevant for a minimum number of 3 employees. The parties of these procedures are in a) usually the works council and the employer, and in b) usually Trade Union and Chamber of Commerce. The effects of the decision is only a declaratory and is only binding for the parties of the procedure. But in practice it is important also for individual disputes. Usually individual worker or non-organized group employees and employers are not parties in collective labour dispute, if not an individual worke is affected.

Labour Courts generally do not resolve conflicts of interest. As noted in **Finland** report: "Disputes of interest do not fall within the jurisdiction of the Labour Court. Instead, they are handled within the system of mediation in labour disputes. The Court also carefully refrains from filling in any lacuna left

in an agreement by the parties." Only partially otherwise in **Slovenia** (the employer's general acts) and **Spain** ("if a disposition of a collective agreement infringes the current legal framework, the court can declare it and this judgement entails the annulment in whole or in part of the collective agreement challenged"). In **Austria** regarding certain collective agreements between works council and employers, there exist a special independent authority –"Schlichtungsstelle" composed of 5 members. This authority is errected by the president of the labour court, on demand of the works council or the employer.

But in every case where the Labour Court determines that a provision of the collective agreement is not in accordance with the Constitution or the statute or where Court decision is interpretation of provisions of collective agreement, this de facto intervene in the content of the collective agreement or amend or even change it.

In **Slovenia**, the Labor Courts have jurisdiction for deciding in the following collective labour disputes:

a) concerning the validity of a collective agreement and its application between parties to the collective agreement or between parties to the collective agreement and other persons;

b) concerning competence for collective negotiations;

c) concerning the concordance of collective agreements with the law, the mutual concordance of collective agreements and the concordance of general legal acts of the employer with the law and with collective agreements;

d) concerning the legality of strikes and other industrial actions;

e) concerning the participation of workers in management;

f) concerning the competencies of trade unions in connection with employment relations;

g) in connection with decisions on the representativeness of trade unions.

An association of workers or employers or individual employers that are party to a collective agreement may file a proposal for the commencement of a procedure in connection with collective agreements or participate in a procedure commenced by someone else. A proposal may also be filed by an association of workers or employers or individual employers or groups of workers if the collective agreement applies to them, if they show that are justifiably enforcing a common interest. Such an association or persons may also take part under the same conditions in a procedure commenced by someone else.

Persons, bodies or associations that are holders of rights and obligations in the relation about which a decision is being made, shall also be parties, under conditions specified by this Act. A court shall inform persons, bodies and associations that are holders of rights and obligations about which the court will decide about the commencement of a procedure, and give them the opportunity to take part in the procedure. An announcement shall be published in the Official Gazette of the Republic of Slovenia and on the notice board and website of the court.

If a court finds that a claim is well-founded, depending on the nature of relations it primarily:

1) finds in favour of the validity or invalidity of a collective agreement, violation of rights or obligation under a collective agreement, discordance of a collective agreement with the law, discordance between collective agreements or discordance of a general act of an employer with the law or with collective agreement.

2) partially or in entirety annuls or annuls ab initio a general act of an employer or individual legal act and, depending on the circumstances of the case, orders the adoption or issue of a new legal act. If the court judges that it is necessary for the protection of rights of parties, it may replace the disputed act in part or in whole by decision.

Individual workers can not be parties to the collective labor dispute, but may be individual employers (for example, if a collective agreement applies only to him). Such an arrangement is of course logical in

a system where the collective agreement applies only to union members which is the party of the collective agreement. In a system where the collective agreement applies to all workers with the employer, even if they are not union members, the situation is different. In **Slovenia** a proposal for the commencement of a procedure in connection with collective agreements may file groups of workers if the collective agreement applies to them, if they show that are justifiably enforcing a common interest.

Another option for workers who are not union members, but subject to a collective agreement, is the filing of individual lawsuits, which can lead to mass disputes. This is a disputes, which have the same legal basis and the same or similar factual basis. Such disputes can normally only be solved in the same way, which ultimately means the same result as in the collective dispute. Such a disputes are treated differently (joint hearing, a solution in one "pilot" case and other treatment after the first "sample"), but with the exception of **Slovenia** there is no formal model for sample procedure (in **Israel, Norway** class action).

In **Slovenia** if a larger number of actions are filed at a court, in which the claim relies on the same or similar material basis and the same legal basis, the court, after receiving answers to the actions may carry out a sample procedure on the basis of one action and adjourn the remaining procedures. Prior to handing down a decision adjourning a procedure, the court must enable the plaintiff to respond to statements made in answer to the action and on adjourning the procedure because of carrying out a sample procedure. Appeal is not allowed against a decision adjourning a procedure because of carrying out a sample procedure. After a final decision has been handed down in the sample procedure, the court shall decide on the adjourned procedures that do not have essential particularities, taking into account the decision in the sample case. A party that had opportunity to participate in the sample procedure may not in adjourned procedures dispute material and legal findings and positions which the court adopted in the sample procedure. A sample procedure has priority.

Conclusion

At first glance, it appears that the assumptions about the more active role of the judge in individual labor disputes and less active role in collective disputes are not correct (1. and 2. starting points). The most direct this is clear from **German** replies: "In the field of German individual labour law/employment law, the role of the Court (judge) is determined by general principles of the adversarial system, including the 'principle of party disposition' ("Dispositionsmaxime" – the principle that the subject-matter of a case is delimited by the parties), the principles that the parties must adduce evidence ("Verhandlungsmaxime") and of equality of arms which govern opposition proceedings. The 'principle of party disposition' applies to the facts or evidence, but not to the law to be applied. Court proceedings have to be impartial.

In the field of German collecitve labour law/employment law, the role of the Court (judge) is determined by the "Untersuchungsmaxime" (which is – in this case – a blend of the adversarial and inquisitorial model – the court is obliged to gather evidence ex officio."

However, such a response, I think, it is true only in part. Because of the established role of the court for a peaceful solution of the conflict (mediation/conciliation, preparatory hearing, the court settlement), the court is in both individual and collective labor disputes necessarily more active primarily at the begining of proceeding.

Even after an amicable settlement does not occur and the process continues more or less along the same formal rules as a general civil proceedings, the court (judge) is not necessarily just a passive player in the process, acting only on the basis of parties statements and proposals. If not otherwise judge can directly or indirectly achieved, that the parties will indicate and submit all that is necessary for the court decision on the merits of the dispute. As for example, states Swedish report: "the judge could, by using cautious questions, lead the party on to a certain track and have the party itself to consider, and perhaps reconsider, if the point taken is juridical convincing."

In case of objections of impartiality we should bear in mind the principle that the court norms of labor law (as substantive law applied by Court ex officio) interpret in favor laboratoris. Both legal norms and the provisions of collective agreements and employment contracts.

NATIONAL REPORTS

Austria

National reporter: Dr. Gerhard Kuras, Supreme Court of Austria

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?

   One of the main points of the Labour an 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 adjucated; 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 seperate court, the Labour an Social-Security Court of Vienna-, the Higher Regional Courts and the Supreme Court in Vienna.*

   *In the **first instance** there are the Co**urts** 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 adjucate 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 Stengthened Senat has to decide, which comprise seven professional judges and four lay judges.*

   When adjucating 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 oft 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 Co**urts** 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 if the Higher Regional Court has to be brought – if allowed at all – to the Supreme Court.*

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?

   Yes. The court has to give leagl advice, if a Party has no attorney or other skilled representative (representative of trade union).

   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)?

      No, but the judge ha to try to achieve a peaceful settlement at the beginning of the procedure.

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)?

No.

Is the preliminary procedure in each country's Labour Courts conducted by the judge or registrar or even one or two lay members?

Yes

Is it done in every case; if not, in which cases and how are they chosen?

Usually in every case.

Whether and to what extent there is written pleadings and documents submitted before the preliminary procedure?

All documents, which are presented in the 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)?

Yes.

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?

Yes

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?

Not preliminary statement. – its part of the procedure.

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?

No, usually they are rejected.

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?

Yes.

May parties in adjourned procedures dispute material (facts) and legal findings and positions which the Court adopted in the sample procedure?

Yes.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

No, only on basis of a provisional order in cases where the claim does not exceed 75.000 EUR

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?

Usually not.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

No

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)?

The judge can give advice tot he parties an can order evidence.

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)?

The judge is only allowed to give legal advice.

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?

Yes , in certain cases, but it is not quite commen

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?

Yes.

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

In most cases, parties have an attorney or other skilled representative (representatives of trade union). Then the judge does not have a very active role.

2.2.8 Can Court ex officio issue temporary injunctions?

No.

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)?

Yes.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

In the advantage of both,if they have no attorney or other skilled representative

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

Less, because the parties need an attorney or other skilled representative to raise an appeal.

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).

In labour disputes we have got two different forms of procedures which may be addressed as "collective(class) actions".

a. *A works council/employer can file a claim for a declaratory judgement of rights or legal action*

b. *Association able to be partner of a collective agreement can apply to the Supreme Court for a declaratory decision.*

In both cases this must be relevant for a minimum number of 3 employees

The Parties of these procedures are:

1a. Usually the works council and the employer.

1b. Usually Trade Union and Chamber of Commerce.

The effects has the decision is only a declaratory.

This decision is only binding for the parties of the procedure. But in practice it is important also for individual disputes.

Usually individual worker or non-organized group employees and employers are not parties in collective labour dispute, if not an individual worke is affected.

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?

There is no obligation of the court, if not an individual worker is affected.

3.2 Can Court ex officio issue temporary injunctions?

No.

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

Regarding certain collective agreements between works council and employers, there exist a *special independent* authority –"Schlichtungsstelle" composed of 5 Members. This authjority is errected by the president oft he labour court,on demand of the works council or the employer.

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

Only the "Schlichtungsstelle".

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)?

Only *if* a party *applies*.

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?

Yes.

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?

The role of the court ist he intepretation of statutory provision but also oft he statutory provisons oft he EU.

This has also implications on legislation.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

Yes, in some cases.

Belgium

National reporter: Judge Koen Mestdagh, Member of the Labour Chamber of the Court of Cassation

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?

Procedure before the Labour Tribunals and Labour Courts is regulated by the Judicial Code just like the procedure before the Civil or Commercial Tribunals and Civil Courts. There are only a few rules that are specific to the Labour Tribunals and Labour Courts, mostly concerning social security disputes. The main differences in procedure concerning labour disputes are in regard with the costs of litigation (less), representation (a trade union representative can represent the worker) and possibility of appeal (the judgment of a Labour Tribunal can always be appealed, irrespective of the value of the claim).

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?

In Belgium the role of a judge is defined as follows: "The judge is obliged to decide the case according to the rules of law that are applicable to the dispute concerned. He has to examine the juridical nature of the facts and acts presented by the parties (the parties don't have to indicate the rules of law whereupon their claim is based). Notwithstanding how the presented facts and acts are characterised 'in rem' by the parties in their admissions, the judge can ex officio supplement their reasons, on condition that he: – doesn't raise a point of discussion that the parties have excluded in their admissions; only bases his judgment on elements that have been properly submitted to him; doesn't change the object of the claim; and that he hereby respects the rights of the defence. The judge has an obligation to raise ex officio the reasons of which the application is commanded by the facts that are in particular submitted by the parties to substantiate their claim."

Whether the judge has to decide a civil, commercial or labour dispute, his role is the same. But being of protective nature, most labour law rules are considered to be imperative in favour of the worker. By consequence, in a labour dispute the judge will more often have to raise or supplement reasons ex officio, mostly to the benefit of the worker.

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?

Mediation is not mandatory. A contract clause making it mandatory would be null and void. As long as he hasn't closed the debate, the trial judge (= the full panel of a presiding professional judge and two lay judges in a labour dispute) can refer the

parties to mediation, but only with their consent. Mediation is always conducted by an external mediator. Confirmation of a partial or complete agreement is not necessary but can be obtained. Confirmation can only be refused if the agreement is contrary to rules considered to be vital to public order. (Mediation was only introduced in September 2005. I have no information to what extent mediation has been made use of in general, but I'm sure that it is rarely applied in labour disputes)

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)?

No. Pre-trial the judge can only set a calendar for submitting admissions and documents. At that stage the judge ignores the real extent of the 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?

No.

2.1.4 Can the Court require 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?

Not pre-trial. If after having closed the debate at the hearing, the judge finds in deliberation that further explanation, additional reasons or additional documents are needed, he can in an interim judgment re-open the debate and invite the parties to file further statements and explanations or hand in additional documents. A time limit for this will also be set in that decision. If the requested information is submitted after expiration of the specified time limit, it will not be taken into account, but only on demand of the opposing party. To respect the rights of the defence, the judge is also obliged to re-open the debate and invite the parties to express their opinion on the matter when he thinks of raising reasons ex officio (cf. the preliminary remark on question 2).

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?

If the Court doesn't manage to isolate one or two of the similar cases when setting a time calendar for submitting admissions and the date of the hearing, it can try to persuade the parties into agreeing with carrying out a sample procedure and if it comes to it, the Court can disregard their objections and decide to adjourn all but one or two of the similar procedures. But in my experience, similar procedures are usually as much as possible carried out at the same time. Provided that the time limit for submitting additional admissions isn't expired, nothing prevents parties in adjourned procedures to dispute in written statement the findings and positions adopted by the Court in the sample procedure, in which case the Court will have to answer to these reasons. In their pleading at the hearing the parties can always, without possible penalty, try to convince the Court that it misjudged the sample procedure.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

Article 755 of the Judicial Code allows the parties to opt for a written procedure, on the sole condition that they all agree. The written procedure is rarely applied in labour disputes.

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?

According to article 734 of the Judicial Code, before opening the debate in a labour dispute, the Labour Tribunal must try to conciliate the parties. It's mandatory to mention in the judgment that the attempt failed. However, in reality this is just a formality. No real attempt to reach a settlement is made at that stage. The presiding judge just asks if settlement is possible and the registrar records that the answer is negative and makes sure that it is mentioned in the judgment.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

Not at all. Article 1138, 2°, of the Judicial Code explicitly forbids the judge to decide 'ultra petita'. It is classic ground for the Court of Cassation to annul a judgment.

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)?

If in his preparation of the hearing the judge finds that he has insufficient information or that he probably will have to raise reasons ex officio, he can invite the parties to give additional explanation or to express their opinion on the matter he thinks he will have to raise reasons ex officio. However, since the documents submitted by the parties to substantiate their claim are usually handed over to the judge at the hearing, it is often difficult for the judge to assess if he needs to be active. Also, the attorney representing a party at the hearing is often not familiar with the case and is unable to give a useful answer. So either he asks for an adjournment or just shrugs his shoulder and leaves it up to the Court to decide without additional information. In my experience it is more efficient to stay relatively passive at the hearing and, if it isn't possible to work around the problem, to re-open the debate and invite the parties in an interim judgment to submit what ever is needed (see also question 2.1.4).

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)?

The judge should not raise reasons that he doesn't have to raise ex officio, like the prescription of a claim for instance. He should not give advice to a party, be it the worker, nor incite a party to claim more or to change the object of the claim. Legitimate suspicion of partiality is a ground for exclusion of the judge. This is if it objectively can appear to a party involved and to public opinion that the judge is no longer able to decide the case independently and impartially.

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?

Yes. The Court can for instance decide to visit the premises to verify which version of the facts is most corresponding with reality (this can be useful e.g. in disputes concerning function classification). The Court can also assign an expert to establish some facts and give his expert opinion on a technical matter (e.g. if the dispute concerns the question whether the employee has become permanently physically incapable to do his job, the Court can assign a medical doctor to examine the employee).

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?

Article 871 of the Judicial Code allows the judge to order every party to the litigation to submit the pieces of evidence they possess. If there are strong and precise reasons to presume that a third party has evidence in its possession, the judge can, according to article 877 of the Judicial Code, order that third party to present it.

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

The panel is always presided by the professional judge, who conducts the hearing. The lay judges can ask the presiding judge to ask the parties a particular question. However, since the lay judges don't have the time to thoroughly examine the statements and admissions before the hearing, they usually rely on the professional judge and stay passive during the hearing. They play their role primarily in the deliberation.

When a new lay judge is appointed, he is instructed that he can't sit in the panel if he has been personally involved in the build up to the case. It can happen that a lay judge doesn't remember that he has written a letter for the employee for example. If this is only discovered during the deliberation, the Court will have to re-open the debate and repeat the hearing with a (partially) different panel. It can not be avoided that a lay judge is contacted by a colleague before the hearing. I believe you can soon notice in deliberation if he is influenced by this from showing personal knowledge of the case. This should not be a real problem since the other lay judge will balance it. If for instance the lay judge – employee is pushing it hard in the deliberation, the lay judge – employer will also harden his position and the vote of the professional judge will decide.

2.2.8 Can Court ex officio issue temporary injunctions?

No.

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)?

Not necessarily. It's not uncommon that the attorney representing a party doesn't know anything about labour law, while representatives of a trade union often are less solid in cases out of the common or in procedural questions.

If it appears that a person without attorney or representative is unable to defend his interests properly, the Court can command him to get a counsel.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

Cf. the preliminary remark on question 2.

2.3. How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

The role of *the judge in a Labour Court (second instance) is the same as the role of the judge in a Labour Tribunal (fist instance). However, quite often the parties make much more effort to present their case well in appeal. Thus, the Labour Court needs less to be active.*

Before the Court of Cassation, which is not a third instance, the civil procedure applies to labour disputes. In civil procedures the Court of Cassation can not raise reasons to annul a judgment ex officio. It is strictly bound by the limits of the reasons invoked in the claimant's request.

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

The Labour Tribunals and Labour Courts in Belgium have only jurisdiction in individual labour disputes. Collective labour disputes as such are not subject to court litigation but are sorted by industrial action and negotiation. The Social Dialogue department of the Ministry of Employment has created an office of mediators to help at solving collective labour disputes. Of course a collective labour dispute can go together with or lead to individual labour disputes. Thus, the judge may indirectly play a role in a collective labour dispute. However, a collective labour dispute usually comes to an end before the Labour Court can give a decision.

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)?

It's not the role of the judge to monitor respect of courts decisions. In most cases the Court doesn't receive any information on the execution of its decisions. But the professional Labour Tribunal or Labour Court judge may sometimes informally receive some information via the lay judges who are all affiliated with the employees or employers organisations.

All disputes concerning compulsory enforcement of judgments belong to the jurisdiction of the judge of attachments, this is a special designation within the Civil Tribunal (civil section of the District Court).

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?

I have no knowledge of a study on this subject so it's very hard to tell to what extent the decisions of the Labour Tribunals and Labour Courts influence behaviour on the field. But in my experience there are relatively less disputes implicating big companies that have a HR department and institutionalised employee representation, compared to small businesses with only a few employees. I suppose this shows that behaviour and decisions of employees and above all employers, are more influenced by court decisions in big companies than in small firms.

It's quite clear that after new statute law is introduced or after an important change of statute provisions, the number of disputes concerning these provisions is mounting. Once the interpretation of the new provisions is crystallised by jurisprudence, the number of disputes often drops again. Obviously this shows that the decisions of Labour Tribunals and 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?

In Belgium the role of any judge is in principle just interpretation of statutory provisions. Article 6 of the Judicial Code forbids judges to decide by way of a general and as a rule valid ruling. Judges are therefore not bound by precedents and this is also valid for the decisions of the Court of Cassation (with one particular exception). On the other hand, article 5 of the Judicial Code holds that the judge isn't allowed to refuse to render a decision on any pretext,

be it the silence, unclearness or incompleteness of the statutory provisions. Thus, court decisions are, together with doctrine, also a source of law. As it is the role of the Court of Cassation to upheld the unity in the interpretation of the legislation, it's mainly the decisions of the Court of Cassation that have an influence on legislation. This can work in two directions. Sometimes the interpretation given by the Court of Cassation is implemented by the legislator in a statutory provision, sometimes a statutory provision is changed by the legislator to counter the interpretation given by the Court of Cassation to the former provision.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

No, it's not the role of the Court but of the doctrine to explain court decisions. Occasionally a press release may be given if a case has attracted the attention of the press. But this is merely an announcement of what has been decided and not an explanation of the decision.

Denmark

National reporter: Judge Niels Waage, Justice, Municipal Court

INTRODUCTION

In Denmark, cases on collective agreements are generally not heard by the ordinary courts of law but by the special tribunal 'the Labour Court' or by industrial arbitration tribunals. The rules are set out in The Labour Court and Industrial Arbitration Act No. 106 of 26 February 2008.

The Labour Court

The Labour Court consists of a number of (lay) judges who are appointed by employers' organisations or public authorities representing state or municipal employers, and labour organisations, and a presidency consisting of six professional judges from the ordinary courts of law.

At present the presidency consists of five Supreme Court judges and a former president of a district court, who has also served as a high court judge for a period. A member of the presidency, acting as chairman of the court, and three judges representing the employers' and the employees' side respectively, participate in the full-court hearings of the Labour Court. In leading cases, the presidency may consist of three presidents during a full-court hearing. Parties not connected with any of the organisations or authorities appointing the judges of the Labour Court may demand that the case be heard and adjudicated by one member of the presidency alone. The Labour Court is the only judicial authority of its kind, and thus a ruling made by the Labour Court cannot be brought before any of the higher courts, not even the Supreme Court.

Industrial arbitration

An industrial arbitration tribunal consists of a chairperson appointed by the president of the Labour Court, who is normally a member of the presidency of the Labour Court or a judge in one of the ordinary courts of law (Supreme Court, high court or district court), and four other members, of whom two are appointed by the employees' side and two by the employers' side. As with rulings by the Labour Court, the decisions of an industrial arbitration tribunal cannot be brought before any higher judicial authority.

Distribution of competencies between the Labour Court/industrial arbitration tribunals

The main task of the Labour Court is to hear cases dealing with breaches of collective agreements, while industrial arbitration tribunals hear cases dealing with the interpretation of collective agreements. However, the distribution of competencies between the Labour Court and industrial arbitration tribunals is not that clearly demarcated. For instance, the parties may agree that a case which according to law falls under the jurisdiction of the Labour Court be heard by an industrial arbitration tribunal. Furthermore, the Labour Court often refers cases to be settled by industrial arbitration tribunals, and

likewise, cases in the Labour Court may be stayed pending the outcome of a case dealing with the interpretation of the collective agreement that is the object of the case in the Labour Court.

The ordinary courts of law

Unlike legal disputes concerning *collective* agreements, legal disputes concerning *individual* employment contracts are dealt with by the ordinary courts of law (district courts, high courts and the Supreme Court) in the same way as other civil disputes. Under certain conditions, the ordinary courts of law may, however, also deal with cases on rights that are based on collective agreements. The rules governing civil disputes are set out in the Danish Administration of Justice Act.

Rules of procedure

There is, in principle, no appreciable difference between the rules that apply to the rules of procedure of the ordinary courts of law, the Labour Court and the industrial arbitration tribunals. As it is, the Labour Court and Industrial Arbitration Act lays down that the rules of the Administration of Justice Act on full-court hearings of civil disputes in courts of first instance shall, with the necessary adjustments, apply to full-court hearings in the Labour Court and to the processing of cases before the industrial arbitration tribunals. Furthermore, other rules on ordinary civil disputes in the Administration of Justice Act also apply to cases in the Labour Court and the industrial arbitration tribunals.

The role of the judge – in general

Under the Administration of Justice Act, the court may not in ordinary civil disputes award a party more than the party has asked for and the court may only take into account the allegations that the party has submitted. Furthermore, it is understood that the parties themselves shall provide information on the case, procure the procedural documents and formulate their claims and allegations. The Administration of Justice Act does, however, set out certain provisions under which the judge can play an active role in the process. The judge may, for instance, call upon a party to make his position known on factual and legal questions that are deemed to be of importance to the case. The court may also call upon a party to submit documents or, moreover, produce evidence if the facts of the case would remain uncertain without such evidence. This applies to both the Labour Court and industrial arbitration tribunals. In cases brought before the district court an important rule applies, namely that the judge shall advise parties who are not represented by counsel on what they should do to provide information about the case and how to safeguard their interests in other respects (section 399, subsection 4, of the Administration of Justice Act).

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?

Answer: See the introduction.

2. Is it true that role of Court (judge) in labour disputes is more active than in civil disputes?

Answer: In the Labour Court and in an industrial arbitration tribunal, the parties will always be a trade union on the one side and an employer or an employer organisation on the other. Thus an individual employee cannot be a party to a case before the Labour Court or an industrial arbitration tribunal. In general, the parties are represented by professionals, which means that there is generally no need for the court (the judge) to play any active role. Therefore, the judge in the Labour Court and an industrial arbitration tribunal will typically not be more active than judges in ordinary civil disputes that are conducted by professional lawyers.

Only rarely does an employee conduct a case before the ordinary courts of law (district court) without legal representation, but in such cases, the judge will advise the employee, as mentioned in the introduction. As a rule the judge is not likely to play any greater active role in individual labour cases than in other cases where a party has no legal representation.

What possibilities have Court (judge) in legislation, to fulfil such role?

Answer: See the introduction.

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)?

Answer: No, neither in the case of ordinary courts of law, nor the Labour Court nor the industrial arbitration tribunals; however it is normally a condition for bringing cases before the Labour Court and industrial arbitration tribunals that the dispute has been discussed at several meetings between the organisations with the purpose of reaching an agreement. The ordinary courts offer mediation and it can be assumed that this offer is often accepted by the parties to an individual labour conflict. Judges may act as mediators. There is no corresponding procedure in the case of disputes heard by the Labour Court or industrial arbitration tribunals.

What is the role of judge in this proceeding? Can the judge who collaborates in mediation also be the trial judge in later proceeding?

Answer: When the parties in a case before the ordinary courts of law have accepted a mediation offer from the court, the judge in charge of the mediation may not hear and determine the case.

Is confirmation of agreement needed from Court (judge)?

Answer: No.

Is the preliminary procedure in each country's Labour Courts conducted by the judge or registrar or even one or two lay members?

Answer: In the Labour Court, the preliminary procedure is conducted by a member of the presidency or the head of secretariat of the Court, who must fulfil the requirements for being appointed a judge in the ordinary courts of law.

Is it done in every case;

Answer: Yes.

If not, in which cases and how are they chosen?

Answer: Not applicable.

Whether and to what extent there is written pleadings and documents submitted before the preliminary procedure?

Answer: In the Labour Court, the documents of the case are submitted during the preliminary procedure and the presiding judge (head of secretariat) can decide on any possible procedural matters prior to the full-court hearing.

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)?

Answer : As mentioned in paragraph 1, an individual employee cannot be a party to a case before the Labour Court or an industrial arbitration tribunal. As to the duty of the judge to instruct a party without legal representation, see the introduction.

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?

Answer: See the answer to question 2.1.2.

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?

Answer: See "The role of the judge – in general" in the introduction.

Is there a time limit within which the parties may file a further statements and explanations?

Answer: Not under the law, but the court may set a time limit.

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?

Answer: There are no rules of law to this effect.

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?

Answer: The court may adjourn a case to wait for the outcome of another case and may also decide to deal with similar cases at the same time.

May parties in adjourned procedures dispute material (facts) and legal findings and positions which the Court adopted in the sample procedure?

Answer: Yes, the outcome of a case will only have binding effect on the parties to the case.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

Answer: The court may reject a case without hearing the parties if the court is not competent to decide the case. But the parties will usually be allowed to state their opinion in this respect. If the court is competent to decide a case, the case cannot be heard on its merits without the parties being heard. An exception to this is if the parties fail to appear at court hearings or fail to submit pleadings to the court.

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?

Answer: In practice, the framework within which a judge settles a case is generous, however it cannot be entirely ruled out that a judge who expresses his opinion on how to decide the case early in proceedings thereby disqualifies himself.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

Answer: No, see "The role of the judge – in general" in the introduction.

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)?

Answer: See "The role of the judge – in general" in the introduction.

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)?

Answer: See "The role of the judge – in general" in the introduction. As far as it is known there are no judicial decisions on this matter.

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?

Answer: No. See "The role of the judge – in general" in the introduction. The judge may call upon a party to produce evidence, but if this is not complied with, the case must be decided taking into account which party has the burden of proof.

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?

Answer: Yes, the Administration of Justice Act lays down rules to this effect.

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

Answer: Lay judges are not normally used in the ordinary courts of law in cases on individual labour conflicts. As mentioned above, there are lay judges in both the Labour Court and in the industrial arbitration tribunals. Although the presiding judge is in charge of the proceedings, lay judges have the same weight in votes as the presiding judge and furthermore, they may, for example, put questions to witnesses. Lay judges are appointed by the employee's organisations and the employers' organisations respectively, and they are therefore not expected to appear as strictly neutral as the professional judge who acts as presiding judge in the Labour Court or as chairperson of the arbitration tribunal. The composition of the court involving equal representation takes this into account.

2.2.8 Can Court ex officio issue temporary injunctions?

Answer: No, this requires the request by a party.

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)?

Answer: Yes, see "The role of the judge – in general" in the introduction.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

Answer: When the parties in the Labour Court and the industrial arbitration tribunals consist of a trade union on the one side and an employer or an employers' organisation on the other, the non-organisational employer may occasionally be considered the "weak" party, a fact which may affect the activity of the court. Employers may also appear before the ordinary courts of law (district courts) without legal representation, in which case the judge shall also advise the employer.

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

Answer: This question is only relevant in the case of the ordinary courts of law, see the introduction, and should be answered thus: judges at the first level of jurisdiction (district court) are typically more active than at the higher level (high court), while the judges in the Supreme Court typically have no active role in the process.

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).

  Answer: Individual employees as such cannot, conceptually, be parties to a collective labour dispute. On the other hand, a non-organisational employer may form part of a collective agreement with a trade union and may therefore also be a party before the Labour Court or an industrial arbitration tribunal, see further under paragraph 1.

- 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?

  No such duty exists, as the outcome of a case is only binding for the parties to the case, see above under paragraph 2.1.5.

3.2. Can Court ex officio issue temporary injunctions?

Answer: No, only on the request by one of the parties.

3.3. Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

Answer: Neither the Labour Court, the industrial arbitration courts nor the ordinary courts of law can make decisions of fact in conflicts of interest.

3.4. In which cases and how the court is involved in mediating the collective labour disputes?

Answer: See above under question 2.1.1.

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)?

Answer: Neither the ordinary courts of law, the Labour Court nor the industrial arbitration tribunals are responsible for ensuring that their rulings are complied with. At the request of a party, decisions of both the Labour Court and the industrial arbitration tribunals as well as decisions made in the ordinary courts of law may be enforced according to the same rules that apply to the enforcement of ordinary rulings under civil law passed by the ordinary courts of law.

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?

Answer: It may be assumed that the decisions of the Labour Court have a major influence on the behaviour of employees and employers, in particular since the monetary sanctions that the Labour Court normally imposes on parties violating collective agreements are very high. This applies to both employers and employees.

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?

Answer: The main task of the Labour Court is not to interpret the law, but to hear and decide on matters relating to breaches of collective agreements, and as far as it is known there are no examples of a ruling passed by the Labour Courts resulting in any amendment of the law itself.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

Answer: Yes, the decisions of the Labour Court are published on i.a. a publicly available website and in a journal, where a Professor of Labour Law at the University of Copenhagen comments on the decisions of the Labour Court. Furthermore, the president of the Labour Court is also the president of the Danish Association of Labour Law (Dansk Forening for Arbejdsret), an association with regular and well-attended meetings on subjects that often deal with the rulings and practice of the Labour Court.

Finland

National reporter: Jorma Saloheimo, President of the Labour Court

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

To begin with, it is perhaps useful to clarify how the concepts individual labour dispute and collective labour dispute are understood in the Finnish system. The distinction between individual and collective labour law has not been a main dividing line in Finnish systematic, but the following remarks can be made.

The term collective labour dispute refers firstly to disputes arising from collective agreements. The dispute itself may concern an individual worker, for instance his or her remuneration or dismissal, but what is essential here is that issue is regulated in a collective instrument. These disputes also belong to the jurisdiction of the Labour Court.

In addition, disputes concerning worker participation have a collective nature. Worker participation is, however, regulated in statutory law, and therefore disputes in these cases are heard and tried in regular courts.

A dispute has an individual character, when it concerns the relationship between an individual worker and his or her employer and is regulated in a source other than collective agreement, for instance employment contract or labour law statute. These disputes are handled in regular courts.

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?

The procedure in the Labour Court is based on the principles of civil procedure. This means, among other things, that the principle of party disposition is the main rule.

There is a special statute regulating the procedure, The Act on the Labour Court (1974). The Act makes a reference to the general statute, the Code of Procedure (deriving from 1734), but contains a number of special provisions which differ from those applied in civil procedure. The main difference concerns the parties to litigation. These are the parties to the collective agreement, which is applied in the case, i.e. normally a trade union and an employers' association. Only if a party declines to bring action in a case, can an individual worker or employer appear as a party in the proceedings.

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?

There is no provision to this effect, and it hardly holds true in practice either. Especially in the Labour Court, where the parties can be regarded as equally strong, the Court does not assume an active 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?

Most collective agreements have provisions on a mandatory grievance procedure, in which a dispute is first taken to local negotiations between the employer and the shop steward, and then, if a settlement is not reached, to negotiations between the parties to the collective agreement. Only after this procedure can a dispute be brought before the Court. The Labour Court judge has no role in these negotiations.

In the preparation of a case in the Labour Court the judge can still attempt to mediate the dispute, as in any other court. In the Labour Court cases, which have undergone the grievance procedure but remained without settlement, there is, however, little room left for successful mediation. Usually the parties wish to have the Court's decision on the interpretation of the collective agreement.

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)?

Yes, this is regular procedure.

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?

This is a matter which can be discussed in the preparatory hearing of a case.

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?

After the exchange of briefs, the Court draws up a memorandum on the demands of the parties and invites them to a preparatory hearing. In this context the Court often poses questions to the parties to clarify their viewpoints. The answers are expected to be given prior to the hearing or in the hearing. Usually no documents are requested in this way. It is up to the parties to decide what written evidence they wish to present.

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?

No, such procedure is not in place in Finland. It is another thing that in a collective dispute a trade union may choose a suitable, representative case to take to the

Labour Court in order to obtain an interpretation of the collective agreement, which can then be applied to a number of similar cases.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

Yes, this is possible, if the parties do not wish to hear witnesses and also otherwise agree to such procedure. This happens quite often in the Labour Court in simple cases concerning industrial action where the facts of the case are clear.

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?

There are no restraints on court settlement in labour law disputes. It is, however, not an advisable method for a judge to reveal the probable outcome of a case. Should he do so, he runs the risk of being bias to hear the case.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

No.

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)?

The judge can ask all the questions, which are necessary to clarify the demands of the parties and the grounds for such demands. It is not, however, suitable to encourage a party to present completely new claims or factual grounds. As for the evidence, the judge may ask how a party intends to establish a certain fact, but he should not go further and make detailed suggestions on the means of proof. In practice, the conduct of procedure often concentrates on limiting rather than widening the presentation of evidence.

All this discussion takes place in the preparatory stage of the litigation. The main hearing is then conducted according to a choreography, which is more or less fixed in the preparation.

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)?

In the Labour Court neither of the parties can be regarded as weaker than the other. Therefore the principle of the disposition of the parties is applied with regard to both parties, and the judge should refrain from an active conduct of the proceedings in favour of the other party.

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?

No, this would be against the basic rules of civil procedure.

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?

Yes, either party can demand that an essential document be produced by the other party or a third party, which is in the possession of that document.

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

The lay members of the Labour Court are allowed to pose questions to witnesses, but otherwise they do not take part in the conduct of the proceedings.

2.2.8 Can Court ex officio issue temporary injunctions?

No.

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)?

In the very few cases, where a worker appears alone in the Labour Court, the judge will have to be more active than normally, because otherwise the procedure is difficult to carry out in an orderly and effective manner.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

Since the parties in the Labour Court are normally associations, there is seldom acceptable cause to treat them differently.

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

There is no appeal from the judgements of the Labour Court. Concerning individual labour disputes in regular courts, the role of the Court of Appeal is similar to the role of the court of first instance.

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).

  As explained above in reply 1, an individual worker has only a secondary right to bring action in the Labour Court. As a rule it is the trade union, which is party to the collective agreement in question, that uses the right of action on behalf of its members.

- 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?

  There is no such duty.

3.2 Can Court ex officio issue temporary injunctions?

No. The Labour Court cannot issue temporary injunctions at all. If needed, such an injunction should be sought from a regular court.

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

Disputes of interest do not fall within the jurisdiction of the Labour Court. Instead, they are handled within the system of mediation in labour disputes. The Court also carefully refrains from filling in any lacuna left in an agreement by the parties.

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

The Court can propose an amicable solution to a dispute of rights in a case at hand.

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)?

The Labour Court does not exercise such monitoring. Instead, the parties to a collective agreement have a duty of surveillance, which means that the associations are obliged to secure that their members apply the agreement correctly and, for instance, observe court decisions concerning the interpretation of the agreement.

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?

According to empirical surveys, the decisions of the Labour Court are well respected and usually put an end to the particular dispute, which has been resolved in the ruling. The large body of collective agreements seems, however, to be an endless realm of new 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?

Since the Labour Court mainly deals with collective agreements, its decisions usually do not have an impact on legislation, but on future agreements.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

The Labour Court issues press releases on important decisions, but does not explain its decisions any further. The reasoning in the decision of the court should be so clear and thorough that no more explaining is needed. There are bad experiences of courts trying to explain their decisions afterwards and thus getting caught up in public debate on whether a decision was justifiable or not.

France

National reporter: M. le Conseiller Michel Blatman, Membre de la Chambre sociale, Cour de cassation

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?

a) Some of these questions have already been answered in the previous report « Do we need labour courts? » for the Budapest Meeting. It is possible to refer to it for more detailed observations.

In France the first instance labour courts, named « conseils de prud'hommes », are specialised labour tribunals integrated in the judicial system. However, they have specific rules of organisation and proceedings enacted by the Labour Code (« Code du travail).

Appeals against their rulings are brought before the « cours d'appel » and sometimes (leapfrog system) when the dispute is of small value, directly before the « Cour de cassation » (French unique supreme Court). Some rules that are specific to the Conseil de prud'hommes also apply before the « Cours d'appel » (appeal courts): oral proceedings, unicity of instance, where they deal with labour law matters.

Oganization : The Conseil de prud'homme is an **elective and joint** jurisdiction (art. L. 1421-1 C.trav.). It is composed of an **equal number of employees and employers**. Each judgment panel (« bureau ») of the Conseil de prud'hommes is thus comprised of only 4 lay judges named

« conseillers prud'hommes » : 2 representative of the employees and 2 representative of the employers. These lay judges are **elected**, on poll lists usually presentend by unions or other labour market organizations, in general elections opened to all employers and workers, voting accordingly to their category.

The entirely equal (paritary) composition of this joint tribunal requires an **absolute equality between its members**: judgements may only be pronounced with a majority of 3 out 4 ; the presidence of the tribunal alterns each year (one year an employer for president and an employee for vice-president, another year the reverse).

In the case of “partage” (split vote by 2 against 2) a professional judge has to complete the panel in order to make a settlement (“départage”), hence possible through the rule of « imparité » (imparity, unequality).

Procedure:

1/ Unlike civil disputes, the rule of **unicity of labour instance** (« unicité de l'instance prud'homale ») set down by article R.1452-6 C.trav. aims to prevent the multiplication of legal disputes between the same parties during the contract of employment. The employee who sues his employer, or the employer who lodges a file against his employee, may not, once hearings are closed and case judged once and for all, present later new claims or demands on the ground of facts or reasons he/she new before this closure.

Article R. 516-1 of Labour Code: « *Any action arising out of an employment contract between the same parties must, whether it emanates form the plaintiff or the defendant, be joined in one single action, unless the ground of the claims arose or became apparent subsequent to the action brought to the Labour Court*. »

2/ But both parties, if authorized to appeal, may lodge n**ew claims (« demandes nouvellese » before the courts of appeal**. In civil cases, on the reverse, new demands are not permitted before the court of appeal, unless they are secondary to the main one : the underlying idea of this rule being to avoid endless litigations with new demands at new stages.

Article R. 516-2: « The new claims arising out of the same employment contract will be admissible at any stage of the proceeding, even on appeal, without the same being demurrable to a motion based on the absence of an attempt at conciliation ».

3/ The venue of the action is easier before the Labour Court than before the High Court (« Tribunal de grande instance ») which is the first instance ordinary court: a simple application or even the voluntary appearance of the parties before the conciliation board are enough (no writ nor summons are necessary).

4/ The means of representation are wider:

The parties are bound to appear in person save where a representative is acting on their behalf where there is a legitimate ground. They may be assisted. (Art. R. 1453-1 C.trav.).

The range of people authorized to assist or represent the claimant is large enough:

* employees or employers of a same line of activity;
* delegates, whether permanent or non-permanent, of trade unions or of employers' association;
* spouse, common-law husband/wive, signatory of a PACS (Pacte civil de solidarité = civil solidarity pact)
* advocates.

The employer may also be assisted or represented by a member of the firm or of that of the branch.

5/ Orality :

« The procedure will be conducted orally. » specifies Art. R. 1453-3 C. trav.

Nevertheless, parties are authorized to set forth their arguments by writing, proviso they appearin the hearings in order to support them orally.

6/ The Labour Courts may not enforce their judgments (Art. R.1454-27)

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?

Roughly yes.

But it largely depends on the idea the labour court judge (who is not a professional judge) or the civil court judge (a professional judge) have about their office. Because, they have somewhat the same tools. Of course, Labour court's first duty is conciliation. But according to the general principles of civil procedure « To conciliate parties is part of the mandate of the judge » (Code of civil procedure, Art. 21).

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?

Yes. Article L. 1411-1 of Labour Code provides that the Labour Court settles by conciliation the disputes which may arise on the occasion of any contract of employment.

The conciliation bench (« bureau de conciliation ») is composed of one employer-labour judge and one employee-labour judge.

The conciliation bench will hear the parties in their submissions and will endeavour to reconcile them. Minutes will be drawn up (R. 1454-10 C.trav.).

Rapporteur(s)

In view of putting the matter in good order for trial, the conciliation bench [as the trial bench, later] may, by virtue of a decision that will not be subject to a review action, appoint **one or more** rapporteurs to compile, in relation to this matter, the necessary information that the Labour Court needs to decide. (Art. R. 1454-1)

The decision that appoints one or two rapporteurs will set the time-limit to carry out their assignment.

A rapporteur is a councillor in Labour Court. He may be part of the trial bench (Art. 1454-2).

Where two rapporteurs are appointed in the same matter, one must be an employer, another one an employee. They work together in relation to their assignment.

The rapporteur may hear the parties and invite them to submit such explanations that he deems necessary to the resolution of the dispute and put them on default notice to produce within a time-limit that he will determine such documents or

explanations appropriate to guiding the Labour Court, failing which he may discard them and set the matter before the trial bench which will draw such inference as proper in relation to the abstention or refusal of a party.

The rapporteur may also hear any person whose testimony appears useful to the manifestation of truth and carry out or order the carrying out of preparatory inquiries.

Decisions taken by the rapporteur will always be provisional and will not become res judicata over the main action.

They will be immediately enforceable and may be subject to a review action only with the judgment on the merits of the case subject to specific rules applicable to expertise.

If the parties are reconciled, even partially, the rapporteur will **record** the terms of the agreement reached in a minutes.

Conciliation bench

The conciliation bench may fix the time-limit for the exchange of documents or notes that the parties intend to submit in support of their claims (Art. R. 1454-19).

The conciliation bench may, notwithstanding the procedural plea or even where the defendant fails to appear, order (Art. R. 1454-14):

* the issuance, if necessary, under a periodic penalty payment, of a certificate of employment, of pay slips and such other items that the employer is legally bound to issue;
* where the existence of the obligation is not seriously challenged, various payments on salaries or indemnities, not exceeding six months salary based on the average of the three last salaries.
* any investigation measure, even sua sponte;
* any necessary measure for the conservation of evidence or objects in dispute.

The conciliation bench may quantify, provisionally, the periodic penalty payment that it has ordered.

The decisions will always be provisional; they will not have the authority of res judicata over the main action. They will be provisionally enforceable, if necessary, on the presentation of the minutes.

They may not be subject to a motion to set aside. They may be subject to an appeal or an appeal in cassation only simultaneously with the judgment on the merits, subject to specific rules in relation to expertise.

If the attempt to conciliate fails, the case is sent to a trial bench (« bureau de jugement »).

The labour court judges who sit at the conciliation hearings may be one of the trial judges of the case

If the parties are reconciled, even partially, the trial bench will record the terms of the agreement reached in a minutes. If necessary, it will specify that the agreement has been executed immediately in whole or in part before the bench for conciliation

Want of a total conciliation, the claims that will still be in dispute and the declarations of the parties in relation to these claims will be noted down in the file or in the minutes drawn by the clerk of the court under the supervision of the president.

To finish answering n° 2.1.1 of the questionnaire:

- The judge who collaborates in conciliation [« mediation » is another means of resolving disputes] may also be the trial judge in later.
- The preliminary procedure is not conducted by a professional judge nor by the registrar, but by these lay judges that are labour councillors.
- The agreement between the parties is recorded in the minutes. There is no need of further confirmation.

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)?

The Code of civil procedure (« Code de procédure civile » , CPC) states that « The judge may invite the parties to provide **factual explanations** that he deems necessary for the resolution of the dispute » (Art. 8).

Similarly Art. 13 provides that « The judge may invite the parties to furnish e**xplanations on the legal arguments** that he deems necessary for the resolution of the dispute ».

Again, Art. 442 CPC lays down that « The presiding judge and the judges may invite the parties to provide legal or factual explanations that they deem necessary to **clarify matters otherwise obscure**. »

These principles of procedure apply also to the proceedings before the Labour Court.

This way, the worker (as well as the employer) can be instructed of the deficiencies of the 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 require a worker to rectify the insufficiency of the suit and instruct the worker how?

The judge may not base his decision on facts not in the debate. But among the facts mentioned in the debate, he/she may even take into consideration such facts that the parties have not expressly relied upon to support their claims (Art. 7 CPC).

Yet, the judge must give or restore their proper legal definitions to the disputed facts and deeds notwithstanding the denominations given by the parties (Art. 12 CPC).

On the other hand, the **duty of neutrality** forbids such help to be given to the worker as set int he questionnaire. If the facts are missing – but not too much – the Labour Court could order investigation measures.

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?

Yes. The Court may invite parties to answer questions on factual or legal aspects of the case. For instance, precise if the firm is covered by a collective agreement and if so, produce it before the Court.

Time-limits should be fixed to the parties, in order not to delay too much the case. It seems that the Labour Court would have to appreciate the consequences to draw from the non-respect of this time-limit.

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?

There are several possibilities in such a situation : 1/ carry out a joinder of proceedings, if conditions are met ; 2/ carry out a sample procedure and adjourn the remaining ones ; 3/ Have all the files come together but concentrate the arguments in a pilot-file (« dossier pilote »).

As regards particularly mass redundancy, Article R. 1456-5 C.trav. provides that if, at the session for conciliation, a division of the Labour Court is seized by several plaintiffs of actions chalenging the permanent mass dismissal, the conciliation bench will order the joinder of their actions.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

No. Because the procedure before the Labour court is oral. If the plaintiff is not present or represented during hearings, he/she is deemed not to sustain the claim.

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?

Normally, the judge should not disclose probable and/or possible final decision. But, in the framework of a possible settlement, the judge can, with « doigté » (tactfully) outline the risks incurred and explain the advantages of a peaceful settlement. For instance, recall the case-law applicable to such a dispute, which may infer a negative or positive solution for a party or the other.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

No, it can't.

Ultra-petita is banned. « The judge must rule upon all what is claimed and only upon what is claimed. » (Art. 5 CPC).

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)?

The judge may order any measure such as expertise, investigation, hearing of witnesses, visit of workplace, etc.

The Labour Court, as aforesaid, may appoint one or more rapporteurs to compile information. It may also ask the parties for more factual and legal explanations.

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)?

The border is effectively tenuous between substantive conduct of proceedings and partiality. The Cour de cassation quashed the ruling of a court of appeal because of the partiality (in favour of the employer) expressed in its reasoning.

But one must keep in mind that French Labour Court is a joint tribunal, composed of both employees and employers, which involves a balance of interests that may prevent or limit partiality.

The fact that the claimant and his challenger are often assisted or represented by union representatives or advocates is also proper to avoid judges partiality. Does similarly the possibility of an appeal.

Partiality being a faulty behaviour, it is possible for the employer to complain before the President of the Labour Court or the President of the Court of appeal.

He may also raise the issue before the Court of Appeal.

A procedure for recusal is a possibility where certain situations leading to objective lack of impartiality are met (Art. 1457-1 C.trav., referring to rules governed by the Code of Civil Procedure (CPC, Art. 341 to 355).

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?

Yes. The Court may re-open the hearings in order to get more explanations ; appoint a rapporteur to enquire; order an expertise or other means of investigation.

It is just a possibility.

Yet, as the Cour de cassation case-law often holds, in different matters, that first and second degree jurisdictions should verify themselves if the employer fulfilled his/her obligations, Labour Courts are encline to search for more evidence than what is proposed by the parties.

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?

The burden of proof is different according to the matters.

Sometimes, the employee is debtor of the proof. For instance, that he/she has been verbally dismissed by the employer.

Some other times, the employer has to bring evidence before the court. For instance, that the behaviour of the employee justified the laying off, or that though there was no written contract of employment signed between the parties, the employee was still at part-time and not full-time as presumed. Or that the wages were effectively paid.

In certain fields, the burden of the proof is shared between employer and employee. For instance, the employee has to establish, before the Labour Court facts from which it may be presumed that there has been moral harassment or discrimination. The respondent (employer) will have to prove that there has been no such behaviour and that the breach of the principle of equal treatment did not exist else was justified by objective and relevant reasons.

It is the same with the proof of overtime: the employee must bring minimum information or evidence which allows the employer to answer. It is not up to the employee to prove he/she accomplished overtime.

The Labour Court judge are empowered to ask third party to give evidence.

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

As aforementioned, the system is not professional judge with lay judges, but full – though non professional-judges.

About possible partiality, see above (2.2.4).

To be mentioned that Labour Court councillors often swiftly respond to law or case-law innovations. For instance, the Labour Court of Lonjumeau (Essonne, South-West of Paris) ruled that the French new law establishing a « contrat première embauche » (First employment contract) was not complying with ILO Convention n° 158 and thus was not applicable. This solution was confirmed later by the Cour de cassation.

2.2.8 Can Court ex officio issue temporary injunctions?

Yes. Labour Court can issue temporary injunctions. For instance periodic penalty payment or measures described above (2.1.).

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)?

It depends, of course, on the personality of both judges and representatives. Maybe it could be said that the activity would be more turned towards the facts when the parties appear without representative or assistants, and more on substantive law when attorneys or skilled representatives are present.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

As a matter of principle, the Labour Court, though understanding the difficulties araised from the weakness of the employee and sometimes trying to be helpful to him/her, must be impartial.

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

Appeal court judge has the same powers as the Labour councillor. According to the court, they apply them more or less actively. For instance, certain appeal courts will emphase judicial mediation, or conciliation before the court. Being more directly governed by the case-law of the Cour de cassation, they will have to make more researches so that they fully respond to the steps defined by law and case-law.

To mention : a **pre-trial judge (judge entrusted to investigate)** can be appointed where the case has reached a stage that it may be ruled upon. The judge entrusted to investigate the matter may hear the parties. He/she may invite them to provide such explanations as he deems necessary to the resolution of the dispute, and may order them to produce within such period as he determines such relevant documents or supporting documents necessary to provide guidance to the court of appeal, failing which he may discard them and transmit the matter to the chamber which will draw any such inference in relation to the abstention or refusal of the party.

He/she may also provide for, even sua sponte, any investigation measure ; order, if necessary, and under a periodic penalty payment, the production of documents held by one party or by a third party where there is no legitimate impediment ; award an interim payment to the creditor where the existence of the obligation may not seriously be challengeable as well as issue any interim measure.

He/she will establish the conciliation, even a partial one, of the parties, and establish the extinction of the proceeding.

The **Cour de cassation**, French Supreme Court, is not a third degree of jurisdiction. It is a regulatory jurisdiction which has no cognizance of the facts. It often raises ex officio points of law, notably communauty, European or international law.

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).

  Even if the different files are joindered and one only ruling held, the dispute is still individual when its object is not a collective litigation.

  Collective dispute refers to strike, elections of representatives, union representativity, functioning of representative institutions, relationship between employers and unions or between unions themselves.

  Collective dispute are dealed with by High courts, whilst individual litigations resort to Labour Courts.

  The Labour Code sets up a procedure for the settlement of collective disputes (L. 2511-1 C. trav.). All these litigations may be submitted to conciliation proceedings. Where the conciliation fails, the dispute is subject whether to mediation or arbitration.

- 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.

  Any collective labour dispute is at once notified at the initiative of the most diligent party to the préfet [a high-ranking civil servant who represents the State at the level of the « département » or the « région » who, in collaboration with the relevant Labour Inspector, intervenes with the aim of findng an amicable settlement. (R. 2522-1 C. trav.)

3.2 Can Court ex officio issue temporary injunctions?

Yes. For instance periodic penalty payment.

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

A Court decision may declare a content non written, non-invocable, or cancel or interpretate it. But the judge is not empowered to replace this content.

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

On the occasion of strikes, with or without occupation of the firm by the employees, the High Court to which the case is submitted by a party (generally the employer) may decide a mediation.

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)?

The Labour Court may not enforce their judgments (Art. R. 1454-27 C. trav.): thus, the problems relating to the enforcement of their decisions may be brought before a specialized civil judge of first instance, named « juge de l'exécution » (execution judge). However, the Labour Court who expressely reserved to itself the right to evaluate the amount of the periodic payment penalty, may fix this amount after non-execution of the judgment.

The provisional enforcement of the following will be automatic for:

- Judgment subject to appeal only in furtherance of a counter-claim;
- Judgment ordering the issuance of a certificate of employment, salary slips or such documents which the employer is held to deliver;
- Judgment ordering the payment of sums by way of remuneration and indemnity in certain cases.

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?

Labour Courts decisions are generally applied and thus become a part of the legal environment of the firm. Such are the decisions that concern work duration, pay or scope of collective agreements. Some judgments order their publishing inside the company, so that they be known by all.

To notice: the decisions of Cour de cassation relating to the obligation of security ajs a result had big influence on the behaviour of employers, fearing to have to pay indemnities for their breach of health and safety rules.

It is not sure, on an other side, that Labour Court decisions help reducing the number of disputes on a general level.

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?

The decisions of Labour Courts, Appeal Courts in their labour law panel, and Cour de cassation (chambre sociale) have an influence on legislation : the law-maker whether enshrines the case-law in new texts (eg: work duration) or combates it (eg: the decision of the Supreme Court stating that the annual modulation of work duration needed the agreement of the employee provoked the adoption of a new text saying the reverse.

4.4. Does the Labour Court introduce and explain court decisions and court practice to public?

The Cour de cassation issues « **communiqués »** (press releases) about its main judgments: explaning the content and the scope of the decision.

It also publishes an **annual repor**t and a periodic b**ulletin of information.**

Interesting rulings may be found on the **Internet site of the Cour de cassation** and on the one of the Official Gazette.

They are very often quoted and commented in **legal magazines, newsletters** from law firms, and studies.

Many sessions of **vocational, executive or managerial training** take account of the new rulings.

Trade unions and employer unions are, as well as lawyers, quite attentive to the new case-law.

Germany

National reporter: Judge Regine Winter, Bundesarbeitsgericht/Federal Labour Court

Observations from a German perspective on the assumptions set out in the "starting points":

The general assumptions set out above about the role of the court/judge do not really match the underlying principles of German labour law.

In the field of German individual labour law/employment law, the role of the Court (judge) is determined by general principles of the adversarial system, including the 'principle of party disposition' ("Dispositionsmaxime" – the principle that the subject-matter of a case is delimited by the parties), the principles that the parties must adduce evidence ("Verhandlungsmaxime") and of equality of arms which govern opposition proceedings. The 'principle of party disposition' applies to the facts or evidence, but not to the law to be applied. Court proceedings have to be impartial.

In the field of German collecitve labour law/employment law, the role of the Court (judge) is determined by the "Untersuchungsmaxime" (which is – in this case – a blend of the adversarial and inquisitorial model; see also the answer to question 2, 2.2.5).

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?

Answer:

In Germany, proceedings at labour courts are regulated by a special law named Labour Court Act (Arbeitsgerichtsgesetz – ArbGG). It contains special rules for labour disputes, but also refers to the Code of Civil Procedure (Zivilprozessordnung – ZPO) and other legal provisions.

Each labour court is composed of both professional and lay judges. The labour courts of first instance and the regional labour courts each comprise of Chambers ("Kammern") with one professional judge and two lay judges. The lay judges are nominated by the trade unions and employers´ associations in the respective judical district. The lay judges have the same rights and powers as the professional judge, but as a rule, the latter plays the leading role in the proceedings *(Lingemann/v. Steinau-Steinrück/Mengel Employment & Labor Law in Germany 3rd edition page 88)*. Although in principle the Chamber as a whole decides, the professional judge has extensive decision-making competence, e.g. concerning all decisions and orders without oral hearing. He/she also holds the conciliation hearing ("Güteverhandlung", which is a compulsory first court hearing, only weeks after bringing the case to court) on his/her own (section 54 (1) ArbGG).

Another special feature of labour court procedures is the differentiation between judgements procedures ("Urteilsverfahren", sections 2, 46 ff. ArbGG) and order procedures ("Beschlussverfahren", sections 2a, 80 ff. ArbGG). The former mainly deals with disputes concerning employment relationships, but e.g. also with disputes between parties to collective agreements. The latter is exclusively applied to collective labour law, particularly to disputes arising out of the Works Constitution Act (Betriebsverfassungsgesetzt – BetrVG).

In the case of an "Urteilsverfahren", the oral procedure at a labour court in first instance starts with a mandatory conciliation hearing (section 54 ArbGG). In the case of a "Beschlussverfahren", the professional judge can mandate a conciliation hearing at his/her discretion (section 80 (2) ArbGG). Following the ArbGG, a conciliation hearing was introduced in 2001 into the Code of Civil Procedure (ZPO). Proceedings at labour courts shall in all instances be expedited, e.g. by shortening time limits in comparison to those of the Code of Civil Procedure among others (section 46a (3), section 47 (1), section 59 ArbGG). Other than in civil proceedings, in judgements proceedings at labour courts in the first instance, the successful party is not entitled to reimbursement for legal costs (section 12a (1) ArbGG.

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?

Answer:

In principle, no. Judgement proceedings of German labour courts follow the "Verhandlungsmaxime", i.e. the principle that the facts and issues need to be adduced by the parties involved. The court is bound by the facts submitted by the parties and decides solely on

their basis. The professional judge nevertheless has the duty to actively prepare and conduct the proceedings (section 139 ZPO, sections 51 and 56 ArbGG). In contrast, by virtue of law order proceedings ("Beschlussverfahren") have to follow the "Untersuchungsmaxime", i.e. the court ex officio establishes the facts according to the requests made by the parties (section 83 (1) ArbGG).

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?

Answer:

Pre-trial procedures/ *out-of-court* conflict resolution:

As far as German labour law is concerned, there are different possibilities for out-of-court conflict resolution. As a rule, labour disputes concerning vocational training relationships must undergo a pre-trial arbitration first. There are moreover arbitration committees on company level ("betriebliche Einigungsstellen", section 76 BetrVG) to solve conflicts between employers and works councils (Betriebsräte). Since recently parties in labour disputes can also agree upon a non-mandatory out-of-court mediation process.

In all these pre-trial procedures the Chairperson may or may not be a professional judge. If a professional judge is involved, this does not form part of his/her authority/duties as member of a labour court. However, should the case come to court after a pre-trial procedure, a person actually involved in the pre-trial procedure (both, professional judges and lay judges) shall not, under any circumstances, become a member of the Chamber in charge in court proceedings.

According to German labour law, the consent of a judge or court is not needed for an agreement achieved by pre-trial arbitration.

The members of the different pre-trial arbitration boards are appointed according to the respective rules of procedure. These boards are not necessarily chaired by professional and/or lay judges.

Out-of-court arbitration procedures are prepared and conducted with the help of written pleadings and documents which are submitted upon request of the chairperson. The extent of their comprehensiveness depends on the respective rules of procedure.

Mandatory preliminary procedure for the peaceful (amicably) settlement *inside the court*:

As already pointed out (see answer 1), the conciliation hearing ("Güteverhandlung") is the compulsory first court hearing in labour court proceedings (in the first instance), only weeks after bringing the case to court (section 54 ArbGG). This conciliation hearing is part of the proceedings and belongs to the functions of the professional judge in charge.

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)?

Answer:

Pursuant to section 139 ZPO the court is obliged to inform parties (employees as well as employers) of any incomplete or incomprehensible submission of facts and to request them to supplement or clarify it and to submit evidence if necessary. It especially has to inform the parties of an overlooked legal aspect, in order to give them opportunity to comment on it (section 139 (2) ZPO). It must however not conduct any official investigation and must observe absolute impartiality. The hints and questions of the court must moreover refer to certain facts, declarations and requests, in order to enable unexperienced parties to appropriate pleadings. Further support being favourable to one party is not allowed.

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?

Answer:

In this case, the answer to 2.1.2 applies. The court is however not entitled to turn an insufficient suit into a sufficient one.

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?

Answer:

a) First and second instance labour courts can impose conditions to the parties and request them to supplement their written pleadings in certain specific respects and to submit supporting documents (sections 56 (1), 64 (6) ArbGG). The courts must however follow the "Verhandlungsmaxime", i.e. the principle that the facts and issues need to be adduced by the parties.

b) The judge can set a reasonable time limit for parties to supplement their written pleadings.

c) In principle no, unless the time limit was not appropriate and the imposed conditions were insufficiently specified.

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?

Answer:

a) The labour court cannot on its own initiative declare one of the procedures based upon similar claims and facts a sample procedure. It needs the consent of every party involved to suspend the remaining procedures.

b) The parties of a suspended procedure cannot intervene in the sample procedure.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

Answer:

In a judgement procedure (Urteilsverfahren), a first instance labour court cannot decide by written procedure without a hearing, even with the consent of the parties involved (section 46 (2) ArbGG). A second and third instance labour court can however decide by written prodedure, provided the parties involved give their consent (sections 64 (7), 72 (6) ArbGG).

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?

Answer:

a) An essential element of the conciliation hearing (Güteverhandlung) is the task of the judge to discuss/consider the elements of law and fact which are pleaded before the Court (cf. 2.1.2). The judge may consider the chances of success of the suit and of the arguments put forth by the parties. He/she is obliged to draw the parties attention to legal problems and can also disclose his/her opinion on the matter. He/she can moreover discuss economic, social and further aspects, especially questions of equity. He/she can also take into consideration the duration and costs of the procedure. After all, the intention of the conciliation hearing requires from the judge a high extent of openness towards the parties.

b) The settlement of the labour dispute can only refer to subjects that are at the disposal of the parties. It must not offend accepted principles of morality (not be contra bonos mores) and not violate public order and compulsory legal provisions. A waiver of a claim from a collective bargaining agreement is only possible by consent of the parties of the said collective agreement (section 4 (4) TVG).

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

Answer:

No. A court is not entitled to grant a party more or something different than what it had applied for (sections 46 (2) ArbGG, 308 (1) ZPO).

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)?

Answer:

In principle, here the answers to questions 2.1.2 and 2.1.4 apply.

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)?

Answer:

a) In judgement proceedings at labour courts, the parties define the subject matter of the legal dispute (Dispositionsmaxime) and adduce the facts and evidence (Beibringungsgrundsatz). The task of the judge is to support parties so that they can make effective use of their rights (see section 139 ZPO). This needs to be done

in full compliance with the "principle of party disposition" under which the parties exercise, in principle, sole control over legal proceedings. Section 139 ZPO is supposed to ensure the fairness of the proceeding, but the judge must by no means take the weaker party's part. He/she is obliged to strict impartiality, otherwise he/she might be objected on the grounds of suspicion of bias (section 42 ZPO).

b) Section 42 ZPO determines the conditions under which a judge can be regarded as biased. This is e.g. the case if he/she does not take the pleadings of one of the parties into consideration or if he/she gives advice to one party outside of the proceedings.

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?

Answer:

In this respect, there is a difference between judgement procedures ("Urteilsverfahren") and order procedures ("Beschlussverfahren"). In judgement procedures, the parties in principle determine the subject and means of the gathering of evidence. The court may only base his/her decision on what has been submitted by the parties. It can, however, gather evidence ex officio in certain cases, e.g. by ordering the submission of documents (section 142 ZPO), evidence by expert witnesses, "visual inspection" by the court (section 144 ZPO) and examining the parties (section 448 ZPO). In contrast, a witness can only be heard by the court, if thi has been requested by the party that bears the burden of proof (section 65 (1, no. 4) ArbGG). In order procedures, the court has to follow the "Untersuchungsgrundsatz" and is therefore obliged to gather 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?

Answer:

Such a possibility exists in principle. In case a worker has to submit documents as a means of evidence that are not at his/her disposal, he/she can request that the court oblige the employer or a third party to submit the designated documents (sections 424, 430 ZPO, section 46 (2) ArbGG).

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

Answer:

In proceedings at labour courts at all instances, lay judges have the same rights and authority as the professional judges. Lay judges have, however, no part in all decisions and orders without oral hearing (section 53 (1) ArbGG) and in the conciliation hearing ("Güteverhandlung") (section 54 ArbGG), which are both conducted by the professional judge on his/her own. In the oral hearing the lay judges can ask questions and their voting right is equal to the professional judges' one (section 192 GVG). The professional judge chairs the hearing (see also answer 1).

2.2.8 Can Court ex officio issue temporary injunctions?

Answer:

No, a temporary injunction can only be issued on the request of a party (sections 920 (1), 936 ZPO, section 62 (2) ArbGG).

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)?

Answer:

The duties and obligations of the court (judge) towards the parties are independent from wether a party is supported or represented by legally skilled person (e.g. attorney, counsel). In practice, the discussion/explanation of legal matters has to be much more comprehensive if legally unexperienced rather than skilled persons are concerned.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

Answer:

The activity of the court may neither intend the advantage of an employee, nor of an employer. The constitutional right to a lawful judge (art. 101 (1) GG = Basic Law) and the independance of the courts (art. 97 (1) GG) guarantee that parties stand trial before a judge who is independent and impartial.

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

Answer:

In principle, labour courts at all instances have the same duties to "inform" the parties (section 139 ZPO, discuss/consider the elements of law and fact). However, there is a difference for the third instance labour court (Federal Labour Court = Bundesarbeitsgericht). It does not function as an "instance of fact". It does not review the decisions of the former instances on a factual, but only on a legal basis. Therefore in third instance there is no duty to inform the parties in terms of a completion of facts and means of evidence.

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?

Answer:

There are two types of procedures at labour courts: the judgement procedure (Urteilsverfahren) (sections 2, 46 ff. ArbGG) and the order procedure (Beschlussverfahren) (sections 2a, 80 ff. ArbGG).

- The judgement procedure mainly applies to individual labour disputes between employer and employee, but also between partners of collective bargaining agreements (Tarifvertragsparteien) (section 2 (5) ArbGG).
- The "order procedure" exclusively applies to collective labour disputes. In numbers, among them disputes arising from the Works Constitution Act (Betriebsverfassungsgesetz = BetrVG) prevail.

Because the order procedure does not just involve two parties, but can involve several participants, every single of these participants has to be heard in such a procedure. The

court must ex officio identify the participants, inform them of the procedure and summon them. They are entitled to speak out and to file a request (section 83 (3) ArbGG).

"Order proceedings" always deal with collective labour disputes (e.g. as to active and passive electoral rights to the works council = Betriebsrat). Individual employers can generally be party in collective labour disputes. Only in very rare and special cases an individual worker/employee can in be party in order procedures.

As far as the question concerns "non-organized groups of employees": there is no possibility for class-action lawsuits in German labour law.

3.2 Can Court ex officio issue temporary injunctions?

Answer:

No. In an "order procedure", like in a judgement procedure, a temporary injunction can only be issued on request (sections 920 (1), 936 ZPO, section 85 (2) ArbGG).

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

Answer:

No. Labour courts are responsible for disputes concerning the validity and interpretation of collective bargaining agreements and decide whether agreements between employees' organisations and employers (or their organisations) can be classified as collective bargaining agreements. Labour courts cannot substitute their own decisions for the regulations by the parties to collective bargaining agreements.

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

Answer:

As well as in the "judgement procedure", during the whole "order procedure" at all three instances, the aim is an amicable settlement of the legal dispute (section 57 (2), section 80 (2), section 87 (2), section 92 (2) ArbGG). The court (judge) is not only entitled, but obliged to try to reach an amicable settlement. This principle requires from the judge a high extent of openness towards the parties. The judge can submit written settlement proposals to the parties. Pursuant to section 80 (2) ArbGG the judge also can arrange a conciliation hearing corresponding to the rules of the judgement procedure.

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)?

Answer:

The court does not monitor the respect for its decision ex officio. The bearer of a legally enforceable claim can request an enforcement procedure (Zwangsvollstreckungsverfahren).

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?

Answer:

Not found any pertinent studies.

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?

Answer:

Basically the courts have the task to apply, interpret and review legal provisions. But in some fields of labour relations, legislation does not exist. It is therefore, that especially in the realm of labour law case law (Richterrecht), essentially based on constitutional principles, has become important to some extent. Among others, the principles of industrial action (Arbeitskampfrecht) and of the personal liability of the employees (Arbeitnehmerhaftung) have been developed by jurisdiction. Substantial legal principles develpod by the Federal Labour Court have been adopted later in legislation, e.g. concerning fixed-term contracts (Befristungsrecht) or "general contractual conditions" in labour law (Allgemeine Geschäftsbedingungen im Arbeitsrecht). In some cases, legislation has deliberately refrained from detailed provisions, in order not to prevent further "contemporary" development of jurisdiction (e.g. in the Act for the Improvement of Company Pension Plans=Betriebsrentengesetz = BetrAVG).

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

The decisions of the Federal Labour Court of the current and the last four years respectively are at public disposal in electronic form and can be checked via its homepage. Further information is to be found in the annual reports which contain a list of all decisions, abstracts of the jurisdiction in different subjects and statistical data. In special cases, the Federal Labour Court also issues press releases.

In special cases, first and second instance labour courts also publish their decisions and press releases on their homepage, in relevant journals and different internet portals.

Explanation and interpretation of decisions are not given by the courts outside their judgements. In the annual report the Federal Labour Court offers among other things a comprehensible public survey of the subjects and problems that have been dealt with during the respective year.

Hungary

National reporter: Éva Simon, Acting President of the Capital Labour Court

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?

We use general rules of civil procedure with specialities for labour disputes. The Hungarian Code of Civil Procedure has a part, which is on Actions Originating in Employment or Membership of a Cooperative.

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?

Yes, it is true, because the Judge shall start the first trial with conciliation if the parties appear.

In Hungary the Labour Trial starts with settlement hearing, where the judge and the parties freely discuss of all circumstances. If a settlement is in conformity with the legal rules and the just interests of the parties, the court shall approve it by a judge's order, while in a contrary case it shall refuse approval and shall continue the proceedings.

A settlement approved by court has the same effect as a judgement; an appeal lodged against an approving order does not have delaying force on the execution of the settlement.

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?

We do not have mandatory preliminary procedure. We have mediation, as used in law, is a form of alternative dispute resolution, a way of resolving disputes between two parties with concrete effects, but it is not mandatory. Typically, a third party, the mediator, assists the parties to negotiate a settlement. There is a plan, the retirement judges will be trained as mediator. According to these plans there will be a possibility to mediate at courts "outside" of the trial.

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)?

Yes. The Court could instruct a worker to correct or supplement the pleading, and it is mandatory. An action must be brought by a complaint; a complaint shall indicate:

a) the trial court;

b) the names, professions, domiciles and positions in litigation of the parties and of the parties' representatives;

c) the right intended to be enforced, presenting the facts that provide the grounds for it and evidences;

d) data from which the competence and jurisdiction of a court can be established;

e) an expressed request of a decision by court (relief sought).

If there is need for documents to verify the competence and jurisdiction of a court and other circumstances to be considered in the line of duties, the original documents or copies (excerpts) of these shall be enclosed to the complaint, unless the data can be verified with an identity card; a reference shall be made to this in the complaint.

If a petition is not in conformity with the provisions of the act or must be supplemented or corrected for another reason, the presiding judge shall give back the petition to the party for completion, fixing a short time limit and indicating deficiencies and shall simultaneously warn him that the court will dismiss the petition or will adjudge it according to its incomplete content if the petition is submitted incompletely again.

If a party completes the deficiencies of a petition within the time limit fixed, the petition shall be considered submitted originally correctly.

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?

The judge is obliged to inform both parties about the relevant facts and the burden of proof. So if the judge realizes that the facts alleged in the action follow no grounds for the claim, must inform the claiment what the relevant facts are, and

that these facts are need to be prooved. This time the judge can inform the parties if some facts are not relevant or need more prooves to be accepted by the Court.

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?

Yes, the Court can requires parties to answer in written statement specific questions fixing a short time limit – usually 15 days. A court may extend a time limit fixed by itself on a single occasion out of another important reason; a time limit – together with its extension – shall not exceed 45 days, unless the preparation of an expert opinion requires a longer time limit. Parties may file a further statements and explanation until closing of proceedings.

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?

We do not have sample procedure. Judges have professional consultation relating to the question of law on claims relies on the same or similar factual basis.

If lots of claiments are sueing in the same file, the judge can separate one of them, and can make a "part decision" about just the one separated case. Generally in these cases judge goes on with the other claiments after finish of the procedure of the Court of Appeal in the separated case.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

Basically not, but there are certain actions which are decided without hearing. These cases are cases for judicial revision of an administrative decision belong to the Labour Court, strike cases, complains of the trade unions. In these cases hearing is not obligatory, but the judge is allowed to make a hearing if he/she finds it necessary.

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?

In Hungary the Labour Trial starts with settlement hearing, where the judge and the parties freely discuss of all circumstances. If a settlement is in conformity with the legal rules and the just interests of the parties, the court shall approve it by a judge's order, while in a contrary case it shall refuse approval and shall continue the proceedings.

A settlement approved by court has the same effect as a judgement; an appeal lodged against an approving order does not have delaying force on the execution of the settlement.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

A decision shall not go beyond the relief sought or the counterclaim; this rule also applies to the incidental charges of the main claim (interest, expenses, etc.).

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)?

The court shall order evidence for establishing facts necessary for adjudging a case. The court may accept as real facts he considers to be publicly known. The same applies to facts of which the court has official knowledge. The court shall consider these facts even if the parties did not mention them, but it shall call the attention of the parties to these facts at the trial. Facts required for the adjudging of a case must be proved usually by the party who is interested in their acceptance as real by the court.

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)?

The court is obliged to provide the necessary information to a party who has no legal counsel and to remind him/her of his/her procedural rights and obligations and to inform him/her of legal aid.

The following persons are excluded from conducting a case and from participation in it as a judge:

a) a party involved in the case, a person entitled or obligated together with a party, and a person who claims the object at issue for himself in part or in full or whose rights or obligations may be affected by the result of the procedure;

b) a representative of a person belonging under point a) or his ex- representative who proceeded in the case;

c) a relative indicated in section (2) or an ex-spouse of a person coming under point a) or b);

d) a person who has been heard as a witness or an expert in the procedure or whose hearing as a witness or expert has been ordered by the court;

e) a person from whom objective judgement of a case cannot be expected out of another reason (prejudice)

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?

Facts required for the adjudging of a case must be proved usually by the party who is interested in their acceptance as real by the court. The Court is not allowed to 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?

The general rule is that the employee must prove the facts stated in his claim. However there are cases where the burden of proof is inversed by law. For example in case of ordinary and extraordinary dismissal the employer must prove the authenticity and substantiality of the reason for dismissal. Furthermore when there is a chance of infringement of the principle of equal treatment, the employer must

prove that it has complied with or it was not obliged to comply with the above principle.

If a party intends to prove his factual statements by a documentary evidence, the document must be presented at the trial for inspection. The court may bind the opposing party at the request of the proving party to present a document possessed by him/her which he/she should have to deliver or to present anyway according to the rules of civil law. The opposing party has such an obligation especially if the document has been made out in the proving party's interest or it proves a legal relation applying to him or it concerns a negotiation related to such a legal relation.

If a document is possessed by a person who does not participate in the action, this person shall be heard as a witness and shall be bound in the course of the hearing to present the document.

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

The court shall proceed with the participation of lay assessors. Professional judges and lay assessors have the same rights and obligations in a court proceeding. A judge is obliged to report immediately to the head of the court if a reason for exclusion has occurred in his respect; he has disciplinary and financial responsibility for failure of reporting or its delayed fulfilment.

2.2.8 Can Court ex officio issue temporary injunctions?

No. If the defendant's liability for performance seems probable according to the data of an action brought for alimony, allowance or another similar temporary provision, the defendant may be bound by a temporary order at the plaintiff's request. The court shall immediately decide in a judge's order on a request for a 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)?

In every cases the judge has to clearly explain the burden of proof. When a worker has an attorney the judge should not lecture his procedural rights.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

The court shall, therefore, see in its line of duties that both parties exercise their rights properly throughout the procedure and meet the obligations they are bound to meet in the lawsuit. The court is obliged to provide the necessary information to a party who has no counsel and to remind him of his rights and obligations. The court shall consider pleas and declarations pleaded by a party not by their formal designation but according to their contents.

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

A complaint shall not be modified in an appellate procedure. A notice of appeal or of adjoining appeal shall not be extended to the part of a lower-court judgement which has not been contested by the appeal or adjoining appeal.

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).

Individual worker or non-organized group employees and employers as parties in collective labour dispute shall file an action individually (one by one. In Hungary we do not have mass action.

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?

We do not have to inform about the commencement of a procedure other persons, bodies and associations that are holders of rights and obligations about which the court decide.

3.2 Can Court ex officio issue temporary injunctions?

No. If the defendant's liability for performance seems probable according to the data of an action brought for alimony, allowance or another similar temporary provision, the defendant may be bound by a temporary order at the plaintiff's request. The court shall immediately decide in a judge's order on a request for a temporary injunctions.

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

No.

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

The Labour Trial starts with settlement hearing, where the judge and the parties freely discuss of all circumstances. However the Court is not obliged to keep a hearing in every collective 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)?

In general the court does not have a monitoring activity after the end of procedure, although it is the competence of the court to order the execution of its judgments in cases when the parties file a claim for execution.

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?

It makes them law-abinding behaviour. At similar cases the employee and the employer will behave according to the decisions of Labour Court.

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?

Basically, the role of the Labour Courts is just interpretation of the statutory provisions, but decisions of Supreme Court have influence on legislation indirectly.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

In general, decisions of the Labour Court are not introduced to public. However in cases that were completed by the Curia (the supreme judicial organ in Hungary) or the Regional Court, the final judgments are accessible for the public at a website anonymised. (without any

personal data) Moreover the county courts ("törvényszék") employ a spokesman who gives information through the media in cases that attract wide public interest. The secretariat for media of the county court reports press releases as well in the above mentioned cases.

Ireland

National reporter: Kevin Duffy, Chairman, The Labour Court

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?

The Labour Court adopts procedures that are less formal than those used in the ordinary courts. There are two types of dispute that can come before the Labour Court. Firstly, there are collective disputes concerning terms and conditions of employment. In these types of disputes, which are referred to as disputes of interest, the court is seeking a fair and equitable basis upon which the dispute should be resolved. In these circumstances the court adopts an investigative role and it seeks information from the parties which it considers necessary in order to decide the case.

The court also hears disputes concerning the breach of individual legal rights, for example, dispute concerning the right to equal treatment in employment. Here the court hears evidence and submissions on the legal principles involved. It is generally for the parties to bring forward such evidence as they consider appropriate to fairly dispose of the case. The court does, however, retain the general right to ensure that the evidence adduced is relevant and necessary

The rules of procedure are determined by the court itself.

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?

Yes. There is a more active role for members of the Labour Court than would be appropriate in the case of a judge in an ordinary court. This is allowed for in the legislation which allows the court to determine its own procedures

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?

Yes. In collective disputes of interest there is a mandatory requirement that the parties attend at conciliation. This is provided by a separate body and takes place before the matter is referred to the Court. Also in disputes involving equality law there is an optional mediation process available to the parties.

In other individual employment rights disputes a new service has been introduced which provided for mediation, on a voluntary basis, as soon as the claim is lodged with the first instance adjudication tribunal. If the dispute is not resolved it is referred to the first instance adjudication and can then be appealed to the Labour Court. The members of the Labour Court are not involved in this process.

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)?

The Court does not have a system of formal pleadings. What is required is that parties file written submissions dealing with the issues of fact and law arising in the case. The Court can direct a party to make further or better submissions if they are considered inadequate or where they fail to adequately deal with an issue arising in the case.

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?

Generally the Court cannot instruct a worker on how to present their claim. If the Court were to do so it would be going outside its judicial role and taking on the role of an advocate. If the facts relied upon discloses no basis for the claim it could be dismissed as being misconceived.

2.1.2 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?

See answer to Q. 2.1.2

2.1.4 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?

The Court can conjoin cases in which the same issues arise but it could only do so with the agreement of the parties. It rarely does so.

2.1.5 Can a Court decide without a hearing (written procedure) and under what conditions?

No. a hearing is always required.

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?

There is no formal provision for settlements being lodged with the Court. If a case is settled the settlement is an agreement between the parties and it is enforceable as a contract. The case is then struck out by the Court. The Court cannot indicate to the parties the possible outcome of a case.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

The Court can only decide what it is asked to decide.

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)?

The Court has full power to require further or better information or evidence where this is necessary in order to fairly dispose of the case.

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)?

This is a difficult and sensitive area. Where a party (usually a worker) is unrepresented the Court will generally consider itself bound to provide some assistance. However, this must stop short of taking on the role of advocate. There is a delicate balance to be maintained and the Court must exercise its discretion so as to ensure that that balance is maintained.

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?

No. evidence can only be taken in open Court.

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?

In certain types of case a worker is entitled to information. For example in equal treatment cases the employer can be required to complete a statutory questionnaire. Where inaccurate information is provided or where the questionnaire is not completed the Court can draw an inference adverse to the employer.

In collective labour disputes the inquisitorial procedures of the Court allow for an employer being directed to make information available. The Court has a general power to direct any party to produce any information or document in their possession where this is necessary

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

All member of the Labour Court have an equal involvement in the case. In general the decision is taken collectively and there is no experience of members taking a partisan position.

2.2.8 Can Court ex officio issue temporary injunctions?

No.

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)?

Generally yes.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

The Court is impartial and must respect the interests of both workers and employers.

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

At the first instance the adjudication is more investigative than on appeal

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).

  There is no distinction.

- 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?

  There is no such obligation.

3.2 Can Court ex officio issue temporary injunctions?

No.

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

No the Court cannot rewrite an agreement.

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

The Court can issue recommendations setting out its opinion on how the dispute should be resolved.

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)?

The Court has a special unit in place which monitors the outcome of its decisions

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?

By its decisions and recommendations the Court tries to set down standards of good practice which employers, employees and their trade unions are expected to observe. It is generally accepted that the decision of the Labour Court do influence the conduct of industrial relations.

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?

Generally the Court role is to interpret and apply legislation. Often where difficulties are identified in legislation recommendation can be made to Government and this can lead to legislative change.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

Yes. These are fully explained on our web site.

Israel

National reporter: Judge Yigal Plitman, Deputy President, National Labour Court

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 specialized 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 judgments about conformity of collective agreements and industrial actions with compulsory Law.

   In collective disputes in Israel the parties appeal to the Labour Court in order to help them manage the conflict and so that the negotiations would be under the supervision of the court. In collective proceedings that are economic disputes in which the employees are threatening to strike, the Labour courts are even more involved with the proceedings than in individual procedures and usually anyone who is necessary to settle the dispute is summoned, including even government ministers and senior members of the economy.
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.

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?

Yes. Israel has enacted special legislation regulating the procedure in the Labour courts:*Labour Court Act 1969; Labour Court rules 1991; Labour Court rules Collective dispute Procedure –1969 And regulations in the Labour Court –1993. Procedures listed in this legislation is partially similar to the general procedure although the procedures that apply in the Labour courts are more flexible and they allow the court to act as it sees best "to achieve justice and a fair trial" (see section 33 of the Labour court act) also when it comes to the rules of evidence the procedures are more flexible (see section 32 of the Labour court act)*

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?

The Labour court judges are more active than in the other courts. In many cases in the Labour courts employees are not represented and therefore, in these cases, the Judge has a more active role. *Occasionally, in collective disputes, as stated above, the judges are even more involved and upon litigants' request may exercise mediation before passing judgment.*

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 colLabourates 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?

The Labour Courts do not have compulsory mediation before starting the procedures.

However when a case is open the court contacts the parties and invites them to a mediation/conciliation meeting under the auspices of the Labour Court, with the court registrar or a Labour law lay judge who have broad knowledge in labour law; were trained in mediation and are qualified mediators (see the Labour Court Regulations (Conciliation)). This process is confidential and if the parties achieve an agreement at the end of it, then this agreement will also be confidential and will not be published. The mediation process is funded by the State so the parties do not have to pay for it. The mediation process does not delay the beginning of the hearing. Parties have to attend the meeting because if the mediation does not succeed, or the parties announce that they are not interested in these proceedings, then a preliminary discussion is held with a single judge, even that very day.

The judge who attends the preliminary discussion may be the judge that attends the evidentiary hearings.

In some cases, the judge, even during the judgement, can transfer the case to external mediation.

Any case that is opened in the Labour Court is first assessed by a judge's assistant, who is a lawyer, to see how to navigate the case and whether it is fit for mediation or rather to go straight to a preliminary discussion. However, cases such as sexual harassment or compensation due to libel and slander will first be assessed by a judge to see whether the case is suitable for mediation.

This mediation/conciliation procedure takes place only in cases regarding the exercising of basic Labour rights up to 10,000 Euro. At the end of the mediation/conciliation process, the agreement the parties reached is transferred to a judge for approval.

Cases concerning more than 10,000 Euro usually have a preliminary discussion without the mediation/conciliation taking place first. However, the Tel Aviv Regional Labour Court has attempted external mediation with those larger cases.

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)?

Yes, basically the judges in Labour Courts advise the parties regarding the existence or non-existence of grounds for suit and whether the correct party is being sued is as well as other factors. However, the degree of involvement varies from judge to judge.

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?

Yes, in these cases the judges advise and direct the parties. The judges read the statement of claim and explain the legal situation to the parties.

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?

The court may, at its own initiative ask questions, order the parties to answer questions with a deposition, request additional documents and more. The court determines the dates for submitting this information if submitted to the court after that set date, the documents will be accepted but the parties will be charged with expenses. This articulates the principle that the procedure serves the essence of the case and not vice versa.

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?

When numerous cases are filed based on the same factual basis or legal infrastructure it is possible to carry out the consolidation process and cases are heard jointly in the same discussion. This depends on how far the case has progressed in court when the other similar cases are discovered. But usually the cases are consolidated and the claims become one proceeding and the parties submit their case summaries together.

There is also the class action procedure in which many plaintiffs can file a class action lawsuit together regarding their rights.

Parties of a collective agreement can conduct proceedings through their representative organization. The representative organization may choose to conduct proceedings or not to do so. If the representative organization chooses to conduct a case it may choose to do so as a class action (or as collective procedure).If the representative organization chooses to conduct a case as a class action than the employees may not conduct the class action by themselves. However, if the employee organization decides not to represent the plaintiffs or waives the right to sue in such a case, then the employees may conduct the case as a class action by themselves

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

The National Labour Court is authorized to order the parties before the hearing on the appeal to summarize their arguments in writing. Regional courts may direct the parties to summarize their arguments in writing weather in addition to an oral discussion or instead of one. All Labour Courts are authorized to do so depending on the specific circumstances of the case and the judge's discretion.

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?

Basically the judge dealing with the case does not disclose the outcome of the case when he suggests a compromise. The very fact that the judge offers the parties a compromise indicates that there is a problem with some of the arguments of the plaintiff or appellant.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

Generally no, the court may not rule more than what was claimed. However, there have been some exceptional cases where it has been done by amending the Plaintiff's original claim.

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)?

Before making a decision or the judgment a judge may ask questions during the interrogation of parties and expert witnesses and ask clarifying questions on his own behalf, request for missing documents and more. The court of appeal (the National Labour Court) can also do so.

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)?

It depends on the judge and on the circumstances of the case. The rule is "he who sues his friend must bring proof". However, in certain cases where the employee sues his employer for the execution of basic rights given to him by law, such as sickpay, holidays, travelling costs etc, the burden of proof is transferred to the employer. In other cases, unrepresented employees are granted guidance by the court causing tension with the aforementioned rule.

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?

See the answer to question 2.2.3 above.

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?

Yes. Anyone holding evidence can be forced to provide it, except for evidence which is privileged under privacy or other specific laws.

2.2.7 Role of a lay judges in Labour disputes, how active they are and how to avoid a possible partiality?

Lay judges in Labour courts contribute knowledge of what happens in the workplace. Many are experts in relevant fields regarding Labour relations, and have actual experience in specific aspects relating to the workplace. Lay judges come from the sector of the employees and employers; they are chosen by a statutory committee and are bound to the rules of ethics. The lay judges attend the legal discussions of a case starting from the evidence hearings. The judges consult the lay judges before the judgment and during the process and also while writing the court decisions and rulings. The judges are using the lay judges' expertise in the relevant fields. The Lay judges have an equal voice to the judges.

2.2.8 Can Court ex officio issue temporary injunctions?

Yes. The Labour Courts are qualified to issue temporary orders just like Civil Courts.

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)?

Usually yes, although there is a policy in the Labour Court judges give guidance and direction to the parties in any case. See answers to questions 2.1.2, 2.1.3 and 2.1.4.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

The Court is not biased in favour of employees and often it is the employer who needs Court guidance, and the same procedural rules apply to both parties. However, in cases where one of the parties is not represented, the court will be more involved in helping him.

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

The rule is that the court of appeal does not regularly interfere with factual findings of the previous courts, but if it appears that the Regional Labour Court did not consider certain facts, or did not give them appropriate weight, then the appeal court will intervene. Regardless the court of appeal may intervene with legal findings.

The National Labour Court making it the country's head authority in Labour law and the Regional Labour Courts are obligated to rule according to its ruling.

In the relevant cases, especially in economic disputes that have large impact, the court will summon anyone who is necessary to settle the dispute, including representative of employers or employees organizations, government ministers and senior members of the economy.

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?

As aforesaid, class actions can be submitted in the Labour Courts and any group of employees (Organized or not) can file a suit regarding a case which is in the Labour Court's jurisdiction and that is not regulated by a collective agreement (collective agreement cases have their own procedure) except for the cases listed in the Collective disputes act.
Parties of a collective agreement can conduct proceedings through their representative organization. The representative organization may choose to conduct proceedings or not to do so. If the representative organization chooses to conduct a case it may choose to do so as a class action (or as collective procedure). If the representative organization chooses to conduct a case as a class action than the employees may not conduct the class action by themselves. However, as aforementioned, if the employee organization decides not to represent the plaintiffs or waives the right to sue in such a case, then the employees may conduct the case as a class action by themselves (see the answer to question 2.1.5).

Groups that are not organized, but want to conduct proceedings regarding their organization under a workers union and their right to do so can do so as part of a collective agreement process.

3.2 Can Court ex officio issue temporary injunctions?

Yes, the court may give temporary orders inter alia temporary orders to prevent a strike, or an order to return to work, temporary restraining orders and so on.

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

Basically Courts do not interfere with the content of collective agreements. The courts may interpret a provision in the collective agreement but the parties of the agreement are normally given autonomy to act on the agreement as they see fit. However the court may interfere with the content of the collective agreement when the agreement contradicts employment protection legislation and principle of equality (for instance the Equal Opportunities Act). In certain cases, when both parties agree to the court's ruling, they may choose to register the ruling as a collective agreement

3.4 In which cases and how the court is involved in mediating the collective Labour disputes?

That is an important task of Labour Courts in collective disputes. In many cases of Collective disputes, the parties appeal to the Labour Court in order to help them manage the conflict and to manage the negotiations .In collective proceedings that are economic disputes, in which the employees are threatening to strike, the Labour Courts are even more involved with the proceedings than in individual procedures. The parties are summoned to update meetings. Normally, the negotiation meetings take place in the chambers of the President of the Court (Regional Labour Court or National Labour Court).

In collective disputes that have large impacts on the state economy, the court will summon anyone who is necessary to settle the dispute, including representative of employers or employees organizations, government ministers and senior members of the economy, to meetings in the chambers of the president of the National Labour Court. The goal of those meetings is to reach an agreed settlement, or to agree on the procedure in which the negotiation will continue under the court supervision. If the parties do not reach an agreed settlement, the representatives attendance would be required at the discussion.

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)?

In many judgments regarding collective disputes the court requires the parties to submit a report regarding the carrying out of the injunction or order to continue to negotiate. The results of important cases are publicized in the media. Academics, lawyers and others frequently write in the press about the results of Labour Court judgments. In most other cases there is no such mechanism, apart from requests that the other party be held in contempt which can result mostly in a fine or most rarely imprisonment. Basically, the Enforcement Authority is responsible for enforcement and execution of monitory judgments given by the court system.

4.2 How do the decisions of Labour Courts influence behavior and decisions of employees and employers? Do the decisions of Labour Courts influence reducing the number of disputes?

The Labour Courts' decisions have a positive impact on the behaviour of employees and employers and on their on going relations. This influence is made possible thanks to the publishing of the courts' rulings.

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?

Yes. The National Labour Court is not a constitutional court. However, it deals with constitutional aspects of the legislation. Additionally, there are rulings of the Labour Courts that turn into legislation. For example, there has been an amendment regarding the employer's obligation to negotiate in good faith in the case of the "emergence" of a new employees' organization, following the National Labour Court ruling in the matter, or the

Right to sit while working act, that was legislated pursuant to The National Labour Court ruling.

Sometimes the judges themselves point out various difficulties and lacunae in the law. In these cases the Labour Courts don't have the ability to directly influence the relevant legislation, and so they may point out the problem to the legislator or any other relevant body by sending a copy of the relevant ruling to the Attorney General.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

The Labour courts do not explain their decisions. As it is said "the decision speaks for itself". However, there is a mechanism in which the court spokesperson distributes the main decision to the media. In Addition, Court's verdicts and decisions are officially published by the Courts Administration.

Italy

National reporter: Fabrizio Miani Canevari, Presidente di sezione Corte di Cassazione Roma

1. In Italy, we have a special system regulating procedure before Labour Courts (part of the Code of civil procedure) for individual labour disputes, which differs from general procedure rules; yet, many of these rules have been modified recalling the model of labour disputes.

Collective labour disputes are regulated by a special statute law (art. 28 legge 20 maggio 1970 n.300) which protect employees organizations, forbidding actions of the employer against the freedom of activity of the trade unions (suits of trade unions against the employer).

Differences from general civil rules still concern the main traits of the special procedure of individual labour disputes, namely

- the prohibition of alterations of the content of the initial pleading, which must specify from ,the start of the proceeding, the matter of the claim, the reasons on which it is grounded, the remedy requested (a limited modification can be authorized by the judge for serious reasons in the first trial hearing). The claimant must also specify in this pleading the means of evidence that he wants to bring in the trial, and enclose the documents of proof. The defendant has the same burden, and has to take a clear and definite position about the claim
- the rule that gives to the trial judge the power to decide ex officio new means of evidence, but within the limitation of the facts and reason already alleged in the trial.

2. Thus, with the exercise of this power ex officio, the role of the trial judge in labour disputes is more active than in civil disputes according to general rules.

2.1 Pre-trial procedures and preparation for main hearing

2.1.1 Until the year 2010, there was a statute rule prescribing a preliminary mandatory attempt for the settlement of the dispute before a "commissione di conciliazione" (administrative authority). This rule has been modified, and this "attempt" (tentativo di conciliazione) is now only optional. According the same 2010 statute law (n.183⁄2010) the trial judge (which in the first hearing had only to attempt an amicably settlement) now must also formulate a proposal to settle the dispute with an agreement.

2.1.2 If the pleading is incomprehensibile, no correction can be made from the judge. However, according to a general procedure rule, if the claim does not specify the contest of the request or the grounds for claim, the judge can fix a time limit for the renewal of the invalid claim.

2.1.3 In this sense, the insufficiency of the suit can be rectified. The order of renewal of the claim can only show the deficiencies of the suit, but not correct them.

2.1.4 Questions about circumstances relevant to the decision can be made by the judge during the trial, and the parties can ask to submit written statements to supplement their defense, with a deadline (five days) before the final discussion. No new documents, other than the evidence already allowed, can be filed. No statements submitted after the expiration of the time limit specified by the Court are taken into account.

2.1.5 The Court can carry out a "sample" procedure among similar claims, but the decision taken for that case has no value of binding precedent (even for the Supreme Court).

2.1.6 No decision can be taken without a hearing.

2.2 At the main hearing:

2.2.1 In a settlement hearing, the judge may not reveal the content of the final decision. However, the draft of settlement he suggests (2.1.1.) can disclose the possible content of this decision. There are no restraints for the conclusion of settlement.

2.2.2 The Court cannot decide beyond the limits and extent of the claim as defined by the parties to the litigation.

2.2.3 The limits of the dispute stated above (1., 2.,2.1.4.) do not allow to supplement incomplete statements of facts or allegations about means of evidence (the judge must decide "iuxta alligata et probata"); on the other hand, "iura novit curia", which means that the Court can establish ex officio the law that applies to the case.

2.2.4 According to the main rule of equality of the parties in litigation, there can be no help at all to the weaker party by the judge. Grounds for the exclusion can be sometimes given if the judge has already expressed his opinion on the case before the decision; the partiality of the judge can be a reason for an appeal, if a violation of the rules can be proved.

2.2.5 If after collecting all the evidence presented by the parties a Court is unable to estabilish the relevant facts, decision is based on the rule of the burden of proof.

2.2.6 The Court cannot impose to the employer the presentation of evidence which, according to the rule of burden of proof, the worker would have to present.

2.2.7 There are no lay judges in the proceedings of labour disputes.

2.2.8 When the claim concerns the payment of sums of money to the worker, and only part of the credit is denied by the employer, the Court can issue a temporary injunction for the payment of the part that is not disputed, or that can be considered already proved.

2.2.9 In labour disputes parties are always assisted by professional lawyers. Self defense can be permitted only for claims of very small value. So, the activity of the judge take places within the limits shown above (2.2.3., 2.2.4).

2.2.10 Under the rule of impartiality (fairness) the activity of the Court cannot favor any of the parties in the proceeding.

2.3. The appeal court decision stands usually on the evidence acquired in the first instance; The Supreme Court decides only on question of law, and can examine the assessment of facts by the second instance judge only for faulty reasoning about the factual grounds of the judgment.

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

3.1-3.1.2.-3.2. 3.3. 3.4. As said above, there are no collective labour disputes, but only the special action (1.) of trade unions against the employer. The single worker can take part only to adhere to the organization claim; in individual disputes, the union can take part in the worker's suit asserting that the behaviour of the employer infringes the freedom rights of the association. Class (mass) actions are provided only for protection of consumer rights. There cannot be disputes about collective agreement or mediation by the Court.

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

4.1 There are no instruments to monitor the respect of court decisions

4.2 The decisions of the Labour Courts certainly influence the behaviour of employees and employers; but, owing to to the complexity of the legal system of protection of the workers rights, we can observe an abnormally high rate of uncertainty about the predictability of the outcome of the disputes, and therefore a very high number of them.

4.3 Labour Courts have only the role of interpretation of the statutory provisions. Legislation intervene quite often to "interpret" statutes when Courts have pointed out the essential ambiguity or uncertainty of some rules.

4.4 There is no explanation to the public about the content of decisions and the court practice, except some press release following the circulation of incorrect information; a general information about the work of the courts would be in any case a difficult task.

Norway

National reporter: Marit B. Frogner, Judge, Labour Court of Norway

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?

The Labour Court of Norway hears collective disputes, see below.

Other disputes fall within the jurisdiction of the ordinary courts. The general rules of civil procedure apply, however, there are certain exceptions and adjustments for some labour disputes. The total numbers of labour disputes (private and public sector) that were registered by the ordinary courts in first instance was 917 in 2011 and 939 in 2010.

In the following, we will distinguish between individual disputes that are heard by the ordinary courts on the one hand and collective disputes that falls within the jurisdiction of the Labour Court on the other.

Individual disputes – the ordinary courts

Financial claims, for instance claim for salary, overtime pay, holiday pay etc., are, as a general rule, subject to proceedings before the conciliation board, cf. chapter 6 of the act of 17 June 2005 no 90 relating to mediation and procedure in civil disputes (the Dispute Act). The procedure before the conciliation board shall help the parties to achieve a simple, swift and cheap resolution of the case through conciliation or judgement, cf. section 6-1 subsection 1. Judgements of the conciliation board may be reviewed by way of action before the district court, cf. section 6-14.

Chapter 8 of the Dispute Act has rules on mediation. In practice, a high percentage of labour disputes will be settled through amicable settlements through mediation. (According to statistics from the Norwegian Courts Administration for 2010 and 2011, 38 per cent of the labour disputes were subject to mediation and of which 68 per cent were settled through mediation.)

Chapter 17 of the Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection etc. (the Working Environment Act) has rules on disputes concerning rights and obligations pursuant to the Act. This includes disputes concerning termination of the employment relationship, suspension etc. In connection with the legal proceeding, the court may, *inter alia*, consider claims concerning settlement of pay and holiday pay, cf. section 17-1. Disputes concerning termination of employment etc. are *not* subject to mediation by a Conciliation Board. However, the general rules of the Dispute Act apply and thus the rules on mediation (see our comments on judicial mediation under 2.1.1 below).

If the employer cannot pay, the Debt Reorganisation and Bankruptcy Act of 8 June 1984 No. 58 contains specific rules in regard to instituting bankruptcy proceedings against an employer. In case of bankruptcy, the state will – up to a certain amount – guarantee pay of salary and holiday pay through the Wage Guarantee Scheme.

Except for the rules laid down in the Employment Act, the Disputes Act does not prescribe a different procedure etc. for labour disputes. However, the general rules on mediation are of particular importance and implies that a high number of the cases are settled through an amicable settlement.

Collective disputes – the Labour Court of Norway

The Labour Court of Norway considers disputes concerning the validity, interpretation and existence of collective agreements, disputes concerning industrial actions and breach of the peace obligation and claims for compensation for breach of collective agreements or the peace obligation, cf. section 33 and 34 of the Norwegian Labour Disputes Act of 27 January 2012 no. 9.

The Labour Court has exclusive jurisdiction over these areas.

We will not comment on the rules of the Act of 18 July 1958 relating to Civil Service Disputes.

In practice, the majority of cases are initiated by labour organizations. However, cases are also initiated by the employers' organisations and employers, for instance disputes concerning interpretation of collective agreements and unlawful strikes.

The Dispute Act applies to the Labour Court as far as it is deemed suitable and does not contravene the provisions of the Labour Disputes Act.

The Labour Disputes Act has rules on, *inter alia*, the composition of the Labour Court. Pursuant to section 38, the court consists of seven members in each case. Three of the judges are professional judges and four are appointed upon nomination by the employers' association and the unions with rights of nomination.

Negotiations must be conducted before initiating legal proceedings. Copy of the protocol or evidence showing that the claimant has tried to conduct negotiations must be submitted together with the writ of summons. If this condition is not satisfied, the court shall inform the claimant that the claim cannot be taken under consideration, cf. section 45 subsection 2 of the Labour Disputes Act.

The Court has an obligation to ensure that the case is fully investigated, cf. section 48 of the Labour Disputes Act.

The court shall at each stage of the case consider the possibility of resolving the matter by encouraging the parties to find an out of court settlement, cf. section 48 of the Labour Disputes Act.

Legal costs are, as a general rule, not awarded, cf. section 59 of the Labour Disputes Act. In special cases and if the court finds in favour of a party, the court may award compensation for legal costs. The opposite is the *general rule* according to the Dispute Act. According to the Dispute Act, a party who is successful in an action is entitled to full compensation for his legal costs from the opposite party, cf. section 20-2 of the Dispute Act. There are, however, some

exemptions to the general rule and the court may in certain cases exempt the opposite party from liability for legal costs in whole or part.

Decisions by the Labour Court are, as a general rule, final and enforceable. A decision may, however, be appealed on the ground that the case did not fall within the jurisdiction of the Court.

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?

Individual disputes

Mediation

The court shall at each stage of the case consider the possibility of a full or partial amicable settlement through mediation, unless the nature of the case or other circumstances suggest otherwise, cf. section 8-1 of the Dispute Act.

Mediation is not mandatory. It is free, and as mentioned above, a high percentage of labour disputes are settled through mediation.

Mediation takes place by the court either at a court hearing or through other contact with the parties, cf. section 8-2.

The preparatory judge in the case, one of the other judges of the court or a person from the court’s panel of judicial mediators may act as the judicial mediator, cf. section 8-4.

The judge will act as a mediator and in general play an active role. According to section 8-5 subsection 3, the mediator may identify proposals for a solution and may discuss the strengths and weaknesses in the parties’ legal and factual arguments.

There are strict rules on confidentiality. The parties cannot testify as a party or a witness about what emerged at the judicial mediation, cf. section 8-6. Judicial mediators must maintain confidentiality about what took place during the judicial mediation, cf. section 8-6. However, they may testify as to whether a written agreement is in accordance with what was agreed during the judicial mediation.

The judge who has acted as judicial mediator in the case may only participate in the further hearing of the case at the request of the parties and if the judge does not consider it imprudent, cf. section 8-7. In practice, the case will be assigned to another judge.

If the parties reach an agreement during mediation, the settlement may be concluded as an in-court settlement and recorded in the court record. As a general rule, in-court settlements have the same legal effect as a final and enforceable ruling. The parties may also enter into an out-of court agreement, and demand that the matter shall be adjourned from the court.

Preliminary procedures – preparation of the case

The preliminary procedure is conducted by a judge.

The court has a duty to give guidance on procedural rules and routines and other formalities as is necessary to enable the parties to safeguard their interest, cf. section 11-5 of the Dispute Act.

Written pleadings, including written evidence, are submitted before the main hearing. The preparatory stage shall, as a general rule, be completed two weeks before the main hearing, cf. section 9-10 of the Dispute Act.

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)?

Individual disputes

Parties who are not represented by counsel may submit the writ of summons, reply, notice of appeal, application for reinstatement and application for reopening orally be appearing in court in person, cf. section 12-1 of the Dispute Act.

According to section 11-5, and a mentioned above, the court shall give the parties such guidance on procedural rules and routines and other formalities as is necessary to enable them to safeguard their interest in the case.

This includes that the court shall seek to prevent errors and shall give such guidance as is necessary to enable errors to be rectified. According to section 11-5 subsection 2, the court shall, in accordance with the rules of the Act, give guidance that contributes to a correct ruling in the case based on the facts and the applicable rules. The court shall endeavor to clarify disputed issues and ensure that the parties' prayers for relief and their positions regarding factual and legal issues are clarified. Further, the court may encourage a party to offer evidence, and to take a position on factual and legal issues that appear to be important to the case. The court shall show particular consideration for the need for guidance of parties not represented by counsel. The court shall provide its guidance in a manner that is not liable to impair confidence in its impartiality. The court shall not advise the parties on the position they should take on disputed issues in the case or on procedural steps they should take.

It may be mentioned that according to section 3-2 of the Dispute Act, the court may order a party not represented by counsel to be accompanied by counsel if the party is unable to present the case in a comprehensible manner.

Collective disputes

See no. 1 above concerning the jurisdiction of the Labour Court.

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?

See no 2.1.2 above.

2.1.4. Can the Court require 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?

Individual disputes

Pursuant to section 11-5, the court's duty to give guidance, the court may encourage a party to take a position on factual and legal issues that appear to be important to the case. The court may also encourage a party to offer evidence, see above.

The parties shall ensure that the factual basis for the case is properly and completely explained, cf. section 21-4. A party shall also disclose the existence of important evidence that is not in his possession and of which he has no reason to believe that the opposite party is aware. This applies irrespective of whether such evidence favours the case of the party itself or favours the opposite party's case.

The court may demand that objects, including documents, are made available, cf. chapter 26 of the Dispute Act.

The court shall actively and systematically manage the preparation of the case.

Immediately after the reply to the writ of summons has been submitted, the court shall, after discussions with the parties, prepare a plan for the future proceedings including setting time limits and making necessary decisions, cf. section 9-4. These decisions include, but are not limited to, whether judicial mediation or mediation at a court hearing should be attempted, a review of the presentation of evidence, access to evidence, whether evidence shall be secured, whether the court shall sit with expert or regular lay judges etc.

The preparatory stage shall be completed two weeks before the main hearing, unless the court fixes a different time limit. As a general rule, the court shall order the parties to submit written closing submission before the preparatory stage is completed, cf. section 9-10.

After the preparatory stage is completed, a party cannot, if the opposite party objects, submit new claims, broaden the prayer for relief in respect of a claim, submit new grounds upon which to base such prayer or present new evidence, unless this happens before the main hearing and is occasioned by the opposite party's closing speech or permitted by the court. The court shall, *inter alia,* grant permission when refusal could lead to unreasonable loss for the party, cf. section 9-16 of the Dispute Act.

Collective disputes

The court shall ensure that the case is fully investigated, cf. section 48 of the Labour Disputes Act.

The court may demand statements from parties, experts and anyone whose statement may be of relevance to the case. (Some exemptions apply.) The court may also demand anyone to present documents, business documents and other evidence that are in their possession, cf. section 48.

In practice, the Labour Court requests that the parties submit written closing submissions two weeks before the main hearing. The Labour Disputes Act does not have the same rule on preclusion as mentioned above, i.e. section 9-16 of the Dispute Act. Since the Labour Court is a one instance court, a postponement of the main hearing may be an alternative should new and important evidence / claims etc arise shortly before the main hearing. In general, this has not been considered a problem.

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?

Individual disputes – ordinary courts

Several parties as claimants or defendants
Several parties may act as claimants in one action subject to certain conditions, including that each of the claims may be heard by the court with the same composition and principally pursuant to the same procedural rules, and that no party objects, *or* the claims are so closely connected that they should be heard in the same action, cf. section 15-2 of the Dispute Act. During the course of the action, one or more parties may bring into the action claims against third parties provided that certain conditions are fulfilled.

Consolidation of cases for joint hearing

Actions that raise similar issues and that shall be heard by a court with the same composition and principally pursuant to the same procedural rules may be consolidated for joint hearing and joint ruling, cf. section 15-6 of the Dispute Act.

Stay of proceedings
The court may on application from a party stay the proceedings in a case if the outcome of the case is wholly or in part dependent on a legal issue that will be bindingly resolved in another case. The court may also stay the proceedings in a case for other weighty reasons. The court shall have regard to the need for swift, sound and cost-effective proceedings, cf. section 16-18.

Class actions
Chapter 35 of the Dispute Act has had rules on class actions. (This was new in the 2005-Act compared to the previous 1915-Act.) Class action is an action that is brought by or directed against a class on an identical or substantially similar factual and legal basis, and which is approved by the court as a class actions.

As the rules are still fairly new, there is limited case law relating class actions. The Supreme Court has not yet heard any class actions relating to labour law.

Collective disputes, see 3 below.

2.1.6. Can a Court decide without a hearing (written procedure) and under what conditions?

Individual disputes

The proceedings at the main hearing shall be oral and the presentation of evidence shall be immediate, cf. section 9-14.

The parties may, with the consent of the court, agree that the ruling shall be made on the basis of a written hearing or a combination of a written hearing and a court hearing, cf. section 9-9 of the Dispute Act. Consent can only be given if it would result in the case being heard in a more effective and cost-efficient manner.

The court may also in some other cases determine the case based on a written hearing, for instance after a court hearing during the preparatory stage and provided that the court has sound basis for doing so and the parties have consented, cf. section 9-5 subsection 4. We may also add that if it is evident that the claim cannot succeed either in whole or in part or it is evident that the objections to the claim are unsustainable as a whole, the court may on application by one of the parties determine the claim by judgement following simplified judgement proceedings, cf. section 9-8 of the Dispute Act. This may take place at any time during the preparatory stage.

Small claims procedure

The Dispute Act has rules on small claims procedure. This applies, *inter alia*, to all cases where the amount in dispute is less than NOK 125 000 (approximately € 16 800). The court shall summon the parties to a court hearing for the finalization of the case, cf. section 10-3. The court hearings shall be oral. If desirable out of regard for the litigation costs, the court can consent to the parties agreeing that the procedure shall be in writing instead. The court hearing may also be held in the form of a distance meeting. There are limitations in regard to the costs that may be awarded.

Collective disputes – The Labour Disputes Act

As a general rule, the main hearing shall be oral. However, if the parties consents and the court considers finds it recommendable, the proceedings may be in writing.

We currently have one case concerning reopening of a previous matter based on new evidence that will be determined on the basis of written procedure.

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?

See comments above 2.1 in regard to mediation.

At the main hearing, it is less common that the judge will initiate discussions concerning possible settlement. However, it may happen.

Anyone who considers to have been subject to misconduct of a judge, may bring a complaint against the judge to the Supervisory committee for Judges. This does not apply to judges in the Labour Court.

In regard to judges in the ordinary courts, the Committee can in case of a misconduct react with authoritative criticism in the form of a "criticism" or a «warning», where the latter is the strongest reaction.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

The court may only rule on the claims that are made in the case, cf. section 11-2 of the Dispute Act. The ruling must fall within the scope of the parties' prayers for relief and the court may only base its ruling on the grounds for the prayers for relief that have been invoked.

(We will not comment on the exemption when the right of disposition of the party is limited, for instance in cases relating to matters of personal status and legal capacity.)

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)?

As mentioned above, the judge has a general duty to give guidance. According to section 11-5 subsection 6 of the Dispute Act and as mentioned above, the court shall during the proceedings show particular consideration for the need for guidance of parties not represented by counsel.

The parties have the primary responsibility for presenting evidence. The court can take care of the presentation of evidence if the parties do not object. The court is not bound by the parties' arguments with regard to questions of evidence, cf. section 11-2 subsection 2 of the Dispute Act.

The court shall ensure that the main hearing proceeds in a focused and proper manner without unnecessary delays to the court, the parties, the witnesses and experts, cf. section 9-13 of the Dispute Act. There are rules regarding the different stages of the main hearing.

In regard to the Labour Court, the parties are in most cases organizations. The court will give some guidance, however, in most cases, the attorneys appearing before the court are experienced and specialized in labour law.

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)?

As mentioned above, the court shall provide its guidance in a manner that is not liable to impair confidence in its impartiality.

The Courts of Justices Act has rules on circumstances that may disqualify the judge. The Labour Disputes Act has particular rules in this regard.

The employer (or the employee) may also, as mentioned under 2.2.1, bring a complaint against the judge to the Supervisory committee for judges.

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?

The court shall establish the facts upon which the case shall be determined based on a free evaluation of evidence, cf. section 21-2 of the Dispute Act. Evidence that is presented is common for all the parties to the case. In cases that are heard orally, the evidence shall be presented directly to the adjudication court, cf. section 21-9 of the Dispute Act. In cases that are heard in writing, evidence shall be presented by way of documentation, cf. section 21-13 of the Dispute Act.

According to section 11-1 subsection 3, the court cannot base its ruling on facts in respect of which the parties have not had the opportunity to comment. In that case, the court shall give the parties guidance pursuant to section 11-5 and if necessary proceed with the case pursuant to section 9-17, subsection 2. (According to section 9-17 subsection 2, the court shall ensure that further proceedings are conducted after the case has been closed for judgement if it finds that such proceedings are necessary in order to ensure a proper basis for ruling on the case.)

In its evaluation of evidence, the court may rely on facts that are acknowledged by a party, established facts and the court's general or specialist knowledge and experience, irrespective of whether such facts and knowledge have been addressed by the parties during the hearing, cf. section 21-2 subsection 3. (Section 11-1 subsection 3, see above, applies to the extent that such knowledge may be uncertain or in dispute.)

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?

See above. Pursuant to section 21-5 of the Dispute Act, all persons are under a duty to testify on facts and to give access to objects etc. that may constitute evidence in legal proceedings, subject to the limitations in the rules on prohibited evidence etc.

It may be added that, as an example on rules on burden of proof, the Act of 17 June 2005 no 62 relating to working environment and employment protection (the Working Environment Act) has some rules stating that the employer has the burden of proof.

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

Individual disputes

According to section 17-7 of the Working Environment Act, and in legal proceedings pursuant to the act, the district court sits with two lay judges for the main hearing (three judges in total). The court of appeal normally includes four lay judges, but may sit with only two if the parties so agree. (The court may sit without lay judges if the parties and the court agree that lay judges are unnecessary.)

We do not have any statistic in regard to the percentage of unanimous decisions by the ordinary courts.

Collective disputes

As mentioned under no 1 above, the court consists of seven members in each case, cf. section 38 of the Labour Disputes Act. Three of judges are professional judges and four are appointed upon nomination by the employers' association and the unions with rights of nomination.

The judges appointed by the employers' association and unions cannot be members of the board of a union or employers' organisation or employed by a union/ organisation.

Of cases heard by the Labour Court in 2010, 12 of a total of 20 judgements were unanimous. In 2011, the number was 16 of 26 cases.

2.2.8 Can Court ex officio issue temporary injunctions?

No.

Chapter 34 of the Dispute Act has rules on interim measures.

The Working Environment Act has rules on the employee's right to remain in his post in cases concerning unjustified dismissal. According to section 15-11, the employee can remain in his post as long as negotiations are in progress. If legal proceedings are instituted within the time limits laid down in the Act, the employee may remain in his post until the matter has been legally decided. The court may, if demanded by the employer, decided that the employee shall leave his post if the court finds it unreasonable that the employment should continue while the case is in progress. The employees' right to remain in his post does not apply to disputes concerning summary dismissal, dismissal during the trial period, contract workers or temporary employees. However, if so demanded by the employee, the court may nevertheless decide that the employee shall remain in his post.

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)?

As mentioned above, the court shall show particular consideration for the need for guidance of parties not represented by counsel.

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

For instance in connection with mediation, the assistance and view of a professional judge may, as a general comment, be an advantage for both the employee and the

employer. Typically in a dispute concerning dismissal, the mediator will in try to provide an "objective" and fair assessment of the case. This may facilitate for an amicable settlement.

2.2. How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

The appeal courts also offer judicial mediation. However, it is not as common as in the 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).

Individual employees may not institute legal proceedings before the Labour Court, see comments under no 1 above. Legal action may, however, be instituted by trade unions.

"Trade union" is defined as any cooperation of workers or workers organizations with the aim to safeguard the employees' interest in relation to their employer (our translation), cf. section 1 litra c of the Labour Disputes Act. Thus, it is in principle sufficient with two employees to constitute a trade union.

The jurisdiction of the court is strictly as laid down in the Labour Disputes Act, and in collective disputes (in short disputes concerning the collective agreement), the legal proceedings are in most cases instituted by the union. We may mention that the right to institute legal proceedings rests with the superior employees' or employers organization.

Actions that raise similar issues and that shall be heard by a court with the same composition, may be consolidated for joint hearing and joint ruling, cf. section 47 of the Labour Disputes Act.

In practice, the parties may also agree on a joint hearing if the cases raise similar issues, even if the composition of the court is not the same. In such cases, the court is composed with additional judges and there are separate rulings.

We also refer to our comments under 2.1.5 above, including comments in regard to "class actions".

- 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?

The court has no legal duty to inform other persons, bodies etc.

In practice, the parties will inform others that may have an interest in the outcome of the case. The Basic Agreement between the trade union LO (Norwegian Confederation of Trade Unions) and the employers organization NHO (Confederation of Norwegian Enterprise) section 2-4 states that either party shall notify the other part of any legal actions against/from any other party to a collective agreement concerning similar provisions in a collective agreement with a third party.

Section 46 of the Labour Disputes Act has rules on third party intervention. Intervention may be permitted for a person who by virtue of his own legal status has a real interest in one of the parties winning, and employers' or employees' organizations with such real interest due to the legal status for its members. The intervener may take procedural steps for the benefit of the party who is to benefit from the support, however, such procedural steps shall not be contrary to those of the party.

3.2 Can Court ex officio issue temporary injunctions?

The Labour Disputes Act does not contain rules on temporary injunctions. It is a moot point whether the Labour Court or the ordinary courts may issue such injunctions.

In practice, the court may consider a case as urgent and arrange for hearing within a short period of time. This has been done in regard to unlawful industrial actions/strikes. In 2010, the Labour Court had two cases regarding unlawful industrial actions. In both cases, the main hearing was 6 days after writ of summons. The parties had agreed to await industrial actions until the court had reached a decision. This has also been agreed previously.

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

The Labour Court only hears disputes of rights, not disputes of interest.

Dispute of rights is defined as a dispute between a trade union and an employer or employers' organization regarding the validity, understanding or existence of a collective agreement, or a claim that is based on a collective agreement (our translation), cf. section 1 litra i of the Labour Disputes Act.

Dispute of interest is defined as a dispute between a trade union and an employer or employers' organization concerning arrangement of future regulation of work and pay or other working conditions that is not comprised by a collective agreement or shall replace a former collective agreement (our translation), cf. section 1 litra j of the Labour Disputes Act.

If the Labour Court in its conclusion of judgement has determined an understanding of a collective agreement, this is binding for all contracts of employments based on the collective agreement, cf. section 34 subsection 2.

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

The Labour Disputes Act does not contain rules on judicial mediation. (See comments under no 1.1.1 regarding judicial mediation.)

However, the court shall at each stage of the case consider the possibility of a full or partial amicable settlement, unless the nature of the case or other circumstances suggest otherwise, cf. section 48 of the Labour Disputes Act.

As mentioned above, the parties are obliged to negotiate before instituting legal proceedings before the Labour Court, cf. section 45 of the Labour Disputes Act.

In practice, a judge may, depending on the case, act as a mediator. The judge will then, as in case of judicial mediation according to the Disputes Act, withdraw from the case. Mediation will be conducted under a duty of confidentiality.

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)?

The courts do not monitor whether their decisions are respected. However, there are rules on enforcement of final and enforceable rulings.

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?

Some labour disputes are subject to extensive publicity and thus more likely to influence the behavior and decisions of employers and employees.

It may be added that homepages of public bodies, for instance by the Labour Inspectorate and the Norwegian Labour and Welfare Service (NAV), contain detailed information about labour rights etc.

In regard to decisions by the Labour Court, and as described above under no 3.3, if the Court in its conclusion of judgement has determined an understanding of a collective agreement, this is binding for all contracts of employments based on the collective agreement.

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?

Decisions in labour conflicts may influence legislation. There have been some examples where the Working Environment Act has been amended after a decision by the Supreme Court.

Decisions and interpretations by the Supreme Court, and the Labour Court within its jurisdiction, are important and weighty factors when interpreting labour legislation. Some rules / principles are also based on case law.

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

No. However, all decisions are published on the internet.

Spain

National reporters: Antonio Martín Valverde, Social Chamber of the Supreme Court,
Miguel Angel Limón Luque, Social Court of Las Palmas de Gran Canaria

1. Judicial bodies responsible for passing and enforcing judgements on labour and social issues constitute in Spain a specialist branch of the judiciary. Similarly, the legal procedure for labour cases has emerged as a special form of civil procedure. The Civil Procedure Act ("Ley 1⁄2000, de Enjuiciamiento Civil" – LEC) is applied in the matters not regulated in the special labour procedure.

The first special regulations on the legal procedure for labour cases were introduced in the early twentieth century with the legislation on industrial tribunals. Since 1958 the judicial channels for resolving (individual or, after the sixties, collective) labour grievances or disputes were contained in the Labour Procedure Act ("LPL"), often amended and consolidated (the last consolidation happened in 1995).

Very recently, the Labour Procedure Act ("LPL") has been repealed by the Social Jurisdiction Act ("Ley 36⁄2011, de 10 de octubre, Reguladora de la Jurisdicción Social") (LRJS). Most of LRJS is "old wine in new wineskin": the new name does not mean a new regulation in all the features of the activity of the labour courts. The structure (divisions, subdivisions and sections – "artículos") of the LRJS is the same or very similar to that of the LPL. Even the contents of the LRJS and of the LPL resemble each other closely in many respects. The main novelty of the LRJS consists of the enlargement of the grievances or disputes submitted to the social courts; under LRJS social courts must resolve the claims against most of the acts issued by Public Administration in labour relations.

The general purposes of the legal procedure for labour cases, in comparison with civil cases, are to facilitate workers' access to the judicial system and to provide a quick solution to labour problems. Therefore, the principles governing the proceedings are: a) free of charge for the worker ("gratuidad"), verbal allegation ("oralidad"), procedural simplicity ("concentración") and rapid processing before the courts ("celeridad") (art. 74 LRJS).

2. Yes. LRJS (and before LPL) grant greater power in the labour cases to the judge (and the court) than the power granted to the judge (and the court) in civil cases. The differences may be

detected at the preparation of the hearing, at the (main) hearing, and at the proceeding of evidence.

2.1 Pre-trial activities and preparation for the hearing

2.1.1 In order to avoid litigation, LRJS establish two mandatory preliminary procedure for the settlement of the dispute: A) prior outside the court conciliation (or mediation), operated by a administrative body that joins together the parties to communicate and to dilute their differences (art. 63 LRJS); B) inside the court conciliation, conciliation carried out by the registrar or secretary (chief of the office) of the court (art. 84 LRJS), the same day fixed for the trial and immediately before this one (art. 82 LRJS).

Prior administrative conciliation (or mediation) is compulsory in principle, but it is in excluded several special proceedings; for instance, in the special proceeding for the protection of constitutional rights and in the proceedings in which the State or a public body is one of the litigants (art. 64 LRJS); in the last case the avoidance of the lawsuit is intended through a administrative claim (art. 69 LRJS).

The agreement or compromise reached at prior administrative conciliation (or mediation) may be challenged by the parties (action of nullity founded on the reasons for contractual invalidation).It may be challenged too by whoever may be detrimentally affected (action of illegality) (art. 67 LRJS). If not challenged, it is enforceable in similar terms as a judicial decision (art. 68 LRJS).

When the litigants reached a positive result in the course of the court conciliation, the agreement must be approved by the registrar or secretary (chief of the office); if approved, the agreement, without prejudging the content of any future ruling, shall be made effective through proceedings for the enforcement of judgements (art. 84 LRJS). See 2.2.1.

The parties are cited to the celebration of court or judicial conciliation and the hearing for the same day (art. 82 LRJS). When the inside the court conciliation ends without positive result the registrar communicates the lack of agreement to the judge, and the hearing begins immediately (art. 85 LRJS); Then, in Spanish labour-procedure law, there are several activities of preparation for the single hearing (preparatory acts, “artículos 76-77), but not a proper pre-trial procedure (art. 85 LRJS). This pre-trial hearing is regulated, on the contrary, in the civil procedure (arts. 414-430 LEC).

2.1.2 The registrar or secretary of the court shall notify the claimant (most of the times, the worker) of certain formal deficiencies of the pleading: only those that obstruct or impede the continuation of the proceedings (art. 81 LRJS).

2.1.3 No.

2.1.4 The registrar or secretary of the court shall require the claimant to submit ex post the not-submitted documents which are necessary to append to the claim; the term for the remedy of omission is four days (art. 81 LRJS).

In principle, the presentation of other additional documents is not permitted after the claim (art. 266 LEC). Exceptions to that norm: documents of later date or impossibility (art. 266 LEC).

2.1.5 The joinder of proceedings may be agreed ex officio or at the party’s request, in case of several claims and identical actions against the same defendant (art. 29 LRJS). The joinder of proceedings shall lead to a joint discussion and a resolution issued in a single ruling regarding all the matters raised (art. 35 LRJS).

2.2 At the hearing

2.2.1 In Spain it is not the judge but the secretary who carries the settlement hearing (see 2.1.1). The restraints for conclusion of court settlement are significant: the secretary shall not accept the agreement it he/she considers that is seriously detrimental to any party or third person, or amounts to a fraud or abuse of law (art. 84 LRJS).

2.2.2 No. Judgements of the labour courts are limited ("framed") by the claims of the parties (principle of "congruencia").

2.2.3 The judge or tribunal, if deemed appropriate, may hear the opinion of one or more experts in the matter subject to the lawsuit, at the time of the trial or thereafter, for further discovery of evidence (art. 95 LRJS).

2.2.4 In principle, the evidence is proposed by the parties (but see 2.2.3). The relevance of the evidence and of the questions made by the parties shall be decided upon by the judge or tribunal. If an accepted piece of evidence is being practised and the party presenting it was to waive to the same, the court may order that the evidence continue. The court may make as many questions it deems necessary to clarify the facts, to the parties and to experts and witnesses. If the court deems that it has insufficient information on issues of any kind that are the object of the dispute, it shall grant both parties the time it considers appropriate to provide information or explanations on further issues (art. 87 LRJS).

2.2.5 See 2.2.3.

2.2.6 Burden of proof: general dispositions of Civil Procedure Act must be applied (art. 217 LEC). But, when a worker or a trade union claim because he/she believes that its constitutional rights (included the right of not being discriminated) have been infringed, once the existence of signs indicating such breach has been ascertained, the defendant must provide an objective and reasonable justification, sufficiently proven, of his/her conduct (art. 181 LRJS, art. 96 LRJS).

2.2.7 In Spain the labour courts do not include lay judges.

2.2.8 Yes, in the special procedure for the protection of constitutional rights of a worker or of a trade union (art. 180 LRJS). Besides, the court may decree a lien over the defendant's goods in a sufficient amount to cover the object of the claim and the expected collection costs, if the defendant's conduct suggests that it wishes to incur insolvency or to prevent the judgement from being enforced (art. 79 LRJS).

2.2.9 Normally, yes. In Spain it is possible in trial-court that any parties may defend personally (without professional assistance) their rights and legitimate interests in a lawsuit (art. 16 LRJS); but actually most of the employers and workers are assisted in court by a attorney or a skilled representative.

2.2.10 The labour courts interpreted and applied labour law, and the purposes of labour law are nowadays much broader than the protection of individual workers; labour law aims too, for example, the promotion of employment, the defence of productivity, the good operation of the labour relations, etcetera.

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

3.1 Individual workers or non-organised group of employees are not parties in collective disputes; the status of plaintiffs in these disputes is limited to trade unions and representative of workers.

An individual employer may be party of a collective dispute affecting a single enterprise or a single work center. An employer's decision or practice may be challenged in a collective labour dispute (art. 153 LRJS).

Collective disputes shall be distinguished from mass ("plural") disputes in that the collective one affects "a generic group of workers" (art. 153 LRJS), i.e. a class or category of workers whose number and identity are not precisely determinated at the time of the collective process, whereas the plural one affects a group of persons whose members are precisely determinated and identified in the process.

Representative trade unions, representative employer associations and bodies or legal representatives of the workers at the work center may intervene as parties to the lawsuit, even if they did not bring the claim, provided that their scope of action was the same or wider than that of the dispute (art. 155 LRJS).

3.2 No, except in the case in which the conduct that has originated the collective dispute encloses a possible beach of a constitutional right (see 2.2.8).

3.3 No. The collective disputes channelled into the courts are only the legal ones, i.e. those "in relation to the application and interpretation" (art. 153 LRJS) of a disposition of the legal system. But, if a disposition of a collective agreement infringes the current legal framework, the court can declare it and this judgement entails the annulment in whole or in part of the collective agreement challenged (art. 164 LRJS).

3.4 In order to process the lawsuit in a collective dispute, a prior administrative or joint committee attempt to conciliation or mediation is required (art. 156 LRJS). But LRJS does not envisage a special step or activity of court conciliation in collective disputes.

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

4.1 Enforcement of the judgements shall be carried out by the court that examined the matter al the instance stage (art. 237 LRJS). The enforcement of final judgements shall be initiated at a party's request, except for judgements delivered in a ex officio proceeding, which shall be enforced ex officio; but once enforcement is applied for, the process shall be executed ex officio and the necessary resolutions and steps shall be issued (art. 239 LRJS). Ex officio proceedings, not very frequent in practice, are initiated by the Labour Administration in certain special cases (art. 148-150 LRJS).

4.2 In Spain, the decisions of labour courts have a strong influence in employment and labour relations.

In my opinion, the number of labour disputes in Spain does not depend on the decisions of labour courts, except collective decisions and decisions of the Supreme Court ("judgements of unified doctrine").

4.3 The decisions of the Supreme Court have a appreciable influence on legislation; sometimes legislator incorporates a court decision in legislation; sometimes legislator introduces a new rule against a ruling of the Supreme Court.

4.4 No.

Sweden

National reporters: Judges Cathrine Lilja Hansson, Carina Gunnarsson and Karin Renman

1. The Swedish legislation in this field is The Labour Disputes (Judicial Procedure) Act (1974:371) http://www.sweden.gov.se/content/1/c6/10/49/82/49c02263.pdf

All matters for which no special provision is made in The Labour Disputes (Judicial Procedure) Act shall be subject to the relevant provisions of the Code of Judicial Procedure or other enactment governing the judicial procedure to be followed in disputes where settlements are permitted. http://www.sweden.gov.se/content/1/c6/02/77/78/30607300.pdf

The court procedure is essentially the same in civil disputes in general and civil disputes concerning labour matters. The main difference lies not in the procedure itself but in the jurisdiction of the courts. To make it simple you can say that labour disputes involving parties who conclude collective agreements are to be referred directly to the (National) Labour Court as first and only instance. A labour-market organisation may act before the Labour Court as a party to an agreement or as a representative of its members. In fact a great deal of the cases brought directly to the Court are of that latter kind, that is disputes concerning individual employees, for instance disputes about alleged unjustified dismissals or different kinds of discrimination against an individual.

Other labour cases, that is, cases not involving parties who conclude collective agreements, are to be tried first by a district court (in Swedish tingsrätt) and decisions by this court being subject to appeal to the Labour Court as a second and final instance. Since 2008 an examination in the Labour Court as a second instance requires a leave to appeal.

Rules regulating the proceedings in general are to be found in the Code of Judicial Procedure while the rules special for labour disputes are to be found in the Act on Litigation in Labour Disputes. The main part of this act regulates the jurisdiction in labour disputes and the composition of the Labour Court. There are a very few special rules regulating the proceedings. One could mention differences in the conditions for giving a judgement by default and in the rules regulating refunding of judicial costs.

2. Generally speaking the rule of Court in labour cases is not more active than in regular civil cases.

The answers below concerning the more specific questions in sector 2.1 are given mainly with the proceedings in the Labour Court (as first instance) at mind.

2.1 Pre-trial procedures and preparation for main hearing

2.1.1. There is no mandatory procedure for the peaceful settlement of dispute when a case has been brought to court. (In labour disputes there is though mandatory for the labour-market organisations to negotiate before a claim could be taken up for consideration by the Labour Court.) While at court the judge are obliged to ask the parties if they are interested in trying to reach a settlement and to work for such a solution. As a judge you usually practice the role of such a mediator in a neutral way so that you don't risk to be considered partial. That means you will still be able to handle the later proceedings also when the effort to reach a settlement doesn't succeed. If the parties reaches an agreement it is possible to have that agreement confirmed by the court, but that is not necessary. It is usually done only when one of the parties want to ensure the fulfilment of the agreement by having an execution title.

The preliminary examination of a case is usually carried out both oral and in writing. Most of the preliminary examination is handled by the young, legally trained associate judges (in co-operation with the responsible chairman) who work at the court. A chairman of the court always leads the preliminary oral hearings in cases concerning interpretation of collective bargains and industrial actions as well as cases concerning alleged discrimination.

2.1.2 A party who wants to institute proceedings before the court has to make an application in writing. If the application doesn't fulfil the formal requirements of an application (stating the claim and indicating the circumstances and evidence in support of it) the plaintiff should be directed to supplement the application. The

court could then formulate direct questions in what respects the application is not complete. The same procedure is applicable – mutatis mutandis – when it comes to the reply from the defendant.

2.1.3 The Court is very careful in general to give directions to the parties when it comes to the material matters of a case. At the preliminary hearings the judge could however, by using cautious questions, lead the party on to a certain track and have the party itself to consider, and perhaps reconsider, if the point taken is juridical convincing. As said above the parties appearing in the Labour Court as first instance are labour-market organisations and they are always represented by lawyers. It is very important that the judge doesn't seem to be partial.

2.1.4 The Court could require a party, also in writing, to answer specific questions. The material matters of a case though belong to the parties so you could not ask them to actually add something to their point of view, only ask them to clarify their positions.

In the Code of Judicial Procedure there are provisions making it possible for the Court to set out a time limit within which the preliminary preparation of the case should be ended. After that limit the parties principle are not aloud to bring forward any further circumstances or evidence. That could however be done under certain conditions. These rules are rarely or never used in the Labour Court.

2.1.5 There is possible for the Court, in understanding with the parties, to sentence over a "pilot-case" or some of the judicial circumstances of a case and adjourn the rest of the cases or case. A sentence in a pilot-case will not be formally binding in the following cases but will of course in practise function that way. If the Court has sentenced over a certain circumstance in a special case, that sentence will be binding when the Court decides upon the rest of that same case. A common example of the latter situation is when the defendant objects that the plaintiffs claim is statute-barred and the Court separately sentence over that question. Due to the outcome of the decision the rest of the case will fall or have to be examined.

2.1.6 Yes it is possible to decide without a main hearing. It can be done if the parties so wish and the Court find it appropriate to do so. (The Court could also dismiss or reject a case, give notice of judgement of default or judgement on an application that is conceded or withdrawn or confirm the result of conciliation proceedings without arranging a main hearing.)

2.2 At the main hearing

2.2.1 The Swedish Labour Court is not familiar with the expression "settlement hearing" as a main hearing. As described above (2.1.1) the court/the judge is trying to find a settlement during the preparation. It is stated in the Code of Judicial Procedure that the court shall, to the extent appropriate considering the nature of the case and other circumstances, work for the parties to reach a settlement. There are no legal restraints. It happens that the parties, with the help from the chairman, reaches a settlement just before or during the main hearing.

2.2.2-3 During the preparation, the court shall proceed, depending upon the nature of the case, the issues in dispute to be elucidated and the parties to state everything that they wish to invoke in the case. By questions and observations the court shall attempt to remedy unclear and incomplete statements made by the parties.

If a main hearing has been held, the judgment shall be based upon material presented at that hearing. The Court can not decide beyond the limits made by the parties.

A judgement may not be given for something else or more than that properly demanded by a party. The judgement may not be based on circumstances other than those pleaded by a party as the foundation of his action. In other words the Court van not decide beyond the limits made by the parties.

2.2.4 In a majority of the cases at the Labour Court the worker is presented by his or her organisation, it is the organization that is part in the procedure. Even the employer is presented by the Employers organisation. In the majority of the other cases, appealed from the lower courts, the worker often has a layer. Generally speaking there is therefore no need to "help" the worker as the weaker party.

When questioning, in the aim to clarify things, the judge has to be observant so that he or she is not "helping" only the two parties in the case.

If the judge is telling her or his opinion on the judgement of the case, or is acting as it is obvious what she or hi thinks will be the outcome, the judge i partial an has to leave the case.

2.2.5 No, the Court does not take evidence ex officio.

2.2.6 There are no special rules concerning evidence for the "workers side". As described above the parties, in a majority of cases, has lawyers.

In some matters the burden of proof is on the employers side, as in for instance cases of dismissals.

2.2.7 The lay judge is not active during the main hearing. Questions goes through the chairman.

2.2.8 No, the court can not ex officio issue temporary injunctions.

2.2.9 We would like to put it the other way around; the judge is in some cases more active when a worker (only in the appealed cases) does not have a lawyer.

2.2.10 The Court guides both sides.

2.3. The judge in the appealed cases are less active. The frame of the procedure is then already set by the district court and it is more difficult to be active. But there are needs for clarifications even in the appealed cases.

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

3.1 Cases involving organizations of employers and employees who conclude collective agreements and cases involving employers having concluded collective agreement on their own are tried directly and finally by the Labour Court.

Other Labour disputes, e.g. when an individual employee without the support of his organization brings an action or when a collective agreement has not been concludes, are first tried by a district court. An appeal against the decision of the district court can then be ledged with the Labour Court, which is the supreme instance for cases of this kind. Leave to appeal is required.

If the dispute concerns collective agreement, which has been concluded with other parties than the parties in the dispute, the court has to inform the parties who have concluded the collective agreement and allow them to give their opinion. (5 cap. 1 § 2, The act on litigation in labour disputes).

3.2 No, a demand from one of the parties in the dispute is required.

3.3 No, not in disputes of interests.

3.4 As other courts in legal civil proceedings in Sweden, the Labour court has the responsibility by law to try to reconcile the parties in a dispute. The discussions in order to reach a compromise/settlement can take place in the court under guidance of a judge or just between the parties themselves.

If the parties agree, the court may decide to appoint a special mediator outside the court. This is very unusual.

(42 cap. 17 § Code of Judicial Procedure)

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

4.1 The court doesn't monitor respect of courts judicial decisions. The parties have to ask relevant authority for execution of a judicial decision, if the opposite part refuses to execute their obligations.

4.2 The Labour Court has a good reputation and the parties in the labour market do usually respect the courts judicial decisions.

4.3 If the legislator unlike a decision from the Labour court, then there is of course a possibility to legislate upon the question. That took place e.g. after the "Britannia" judgement.

The legislator usually don't implement in the legislation principles which have been decided by the Labour court.

4.4 The Labour court publishes their judicial decisions on their website and in the Labour courts year-book.

Venezuela

National reporter: Juan Rafael Perdomo, Magistrado, Tribunal Supremo de Justicia

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?

Answer: The Organic Procedural Labour Law (LOPT, for its acronym in Spanish) is in force since August 13th 2002 in the Bolivarian Republic of Venezuela. This special law regulates all labour procedures.

The main differences between the acts that regulate labour and civil procedures are:

a) Labour procedures are attributed to an autonomous and specialized jurisdiction, while civil procedures are attributed to an ordinary and non-specialized jurisdiction (Article 1 of the LOPT).

b) Labour procedures are held in two hearings: a preliminary one and then the trial. Also, they are governed by the principles of oral proceedings, intermediation, concentration, brevity, speed and publicity, among others, in every step and stage of the process. Civil procedures do not require any hearings and are governed by the principles of writing, mediation and deconcentration (Articles 2, 3, 4 and 17 of the LOPT).

c) Labour procedures are governed as well by the principle of uniformity. Therefore, there are two other procedures: ordinary and abbreviated. Civil procedures are governed by the principle of diversity. Therefore, there is an ordinary and many special procedures. (Article 2 of the LOPT).

d) Labour procedures use judicial mediation as an alternative procedure to solve disputes before trial, while civil procedures do not use mediation (Article 6 of the LOPT).

e) Labour procedures aim for the truth. Therefore, they are guided by the principles of priority off reality, probation, probative powers of the judge and value of the evidence of sound critics. Civil procedures aim for the truth as well, but are only guided by the principles of probation, restricted probative powers of the judge and legal fee. (Articles 2, 5, 6 and 10 of the LOPT).

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?

Answer: Yes, the role of judges in labour disputes is more active that in civil ones as the labour procedures is governed by the principle of the ruling judge of the procedure. Therefore, the LOPT empowers the judge to actively intervene in every step and stage of the process (Article 6 of the LOPT) and may order the review of the libel (Article 124 of the LOPT), drive the proceeding (Article 6 of the LOPT), promote the use of alternative ways to solve disputes (Article 6 of the LOPT), chair hearings (Articles 129, 152, 164 and 173 of the LOPT), impose disciplinary sanctions (Articles 48, 122, 152 and 164 of the LOPT), order the examination of the evidence (Article 5 of the LOPT), interrogate the parties (Article 103 of the LOPT), order the payment of non-claimed amounts of money that have been discussed and proved during the procedure and dictate the payment amounts greater than intended if they correspond to the claimant by law (Article 6 of the LOPT).

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?

Answer: Yes, there is a mandatory preliminary procedure for the peaceful (amicably) settlement of dispute (mediation). It consists on a preliminary hearing that takes place in two stages: a judicial mandatory mediation for the parties to find a solution to the dispute and a procedure to heal procedural vices (Articles 129 to 134 of the LOPT).

The role of the judge is to conduct to the procedure. Therefore, the judge chairs the mediation hearing and facilitates and guides the parties to find a solution to the dispute (Articles 6 and 129 of the LOPT).

No, the judge that collaborates with the mediation is specialised and cannot participate in subsequent proceedings (Article 18 of the LOPT).

Yes, the confirmation of agreement is needed from the court through a judgement that carry the full effect of *res judicata* (Article 133 of the LOPT).

Labour procedures are attributed to an autonomous and specialised jurisdiction, while the preliminary proceeding or preliminary audience is carried out by a specialised professional judge called a judge of proceedings, mediation and execution of labour (Articles 1, 17 and 18 of the LOPT).

A specialised professional judge always conducts the preliminary hearing. Also, the mediation is judicial and mandatory. Therefore, it takes place once the claim has been filed, admitted and notified (Article 126 of the LOPT).

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)?

Answer: Yes. If the judge finds that the libel does not comply with the requisites demanded by law, the judge may ask the petitioner, with a notice of expiration, to rectify the libel in a period of two (2) working days following the notification date (Article 124 of the LOPT).

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?

Answer: Yes, the Court may guide the worker and require him/her to rectify the insufficiency of the suit. (Article 124 of the LOPT).

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?

Answer: Yes. The Court may require the parties to answer in written to specific questions if they aim to rectify the suit, or orally if they aim to proof a fact. The judge may also, using the probative powers invested, demand one of the parties to submit extra documents (Articles 2, 5 and 6 of the LOPT).

There is a time limit for parties to submit extra declarations and explanations. If written, they must be submitted two (2) working days after the notification date. (Article 124 of the LOPT) or in a brief period of time after the judge makes a decision, if it is the case of a preliminary hearing (Article 134 of the LOPT).

The documents submitted before the Court after the deadline are taken into account depending on their classification and the manner of submission. If such documents are public, they may be submitted at any time before the appeal hearing. If the documents are private, they must be submitted at the preliminary hearing (mediation) (Article 73 of the LOPT). If the documents are evidence required by the judge, they are taken into consideration even if they are submitted after the deadline, as long as the parties are able to exert their right to control the evidence (Article 56 of the LOPT).

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?

Answer: No. There are no legal rules in that matter.

2.1.6 Can a Court decide without a hearing (written procedure) and under what conditions?

Answer: Yes. If the defendant does not appear to the preliminary hearing (mediation), the admission of the alleged facts will be presumed and the Court will orally judge him/her according to that confession, as long as the claim of the plaintiff is not legally contradictory. The judgment must be presented on a document written on the same day. There is a possibility of appeal and annulment, if that is the case (Article 131 of the LOPT). However, if the defendant promoted proofs, the lawsuit will not be filed immediately and will be remitted to a trail judge for its evaluation and decision. If the

defendant does not appear to the trial hearing, the defendant shall be deemed confessed in relation to the facts presented by the plaintiff, when these facts are legally appropriate. The lawsuit is presented orally and based on such confession and shall be reduced into writing in the same hearing. There is a possibility of appeal and annulment, if that is the case (Article 151 of the LOPT

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?

Answer: No. The mediation judge is specialised and is different from the trial judge. Therefore, the mediation judge is not aware of the possible final decision. However, it is common that the mediation judge, based on his/her experience, notifies the parties of the odds of winning or losing, in order to consider this as factor when choosing an alternative solution to the dispute.

2.2.2 Could the Court decide beyond the limits and extent of the claim as defined by the parties to the litigation?

Answer: Yes. The judge might order the payment of non-claimed amounts of money that have been discussed and proved during the procedure. The judge might also dictate the payment amounts greater than intended if they correspond to the claimant by law (Article 6 of the LOPT).

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)?

Answer: The labour judge is governed by the principle of the ruling judge of the procedure. Therefore, the LOPT empowers the judge to actively intervene in every step and stage of the process (Article 6 of the LOPT) and may order the review of the libel (Article 124 of the LOPT), drive the proceeding (Article 6 of the LOPT), promote the use of alternative ways to solve disputes (Article 6 of the LOPT), chair hearings (Articles 129, 152, 164 and 173 of the LOPT), impose disciplinary sanctions (Articles 48, 122, 152 and 164 of the LOPT), order the examination of the evidence (Article 5 of the LOPT), interrogate the parties (Article 103 of the LOPT), order the payment of non-claimed amounts of money that have been discussed and proved during the procedure and dictate the payment amounts greater than intended if they correspond to the claimant by law (Article 6 of the LOPT).

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)?

Answer: The law does not establish an express limit of the substantive conduct of the procedure and that partiality of the judge. This is why the judge must do whatever it is necessary to establish the truth and justice in every case (Article 257 of the Constitution of the Bolivarian Republic of Venezuela and Article 5 of the LOPT). However, if the judge aims for an objective different from truth and justice, the judge might incur in partiality, which must be decided in every case.

The employer might object that the judge replaces the negligent behaviour of the worker during the probative period, but the employer does not take into account that the truth and justice are fundamental ends of the labour process and go beyond the behaviour of the parties.

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?

Answer: Yes. The labour procedure aims to find truth and justice (Articles 257 of the CRBV and 5 of the LOPT). To achieve this objective, the labour judge is empowered to guide the process, has wide probative powers and is capable of actively intervening in every step and stage of the process (Article 6 of the LOPT) and may order the review of the libel (Article 124 of the LOPT), drive the proceeding (Article 6 of the LOPT), impose disciplinary sanctions (Articles 48, 122, 152 and 164 of the LOPT), order the examination of the evidence (Article 5 of the LOPT) and interrogate the parties (Article 103 of the LOPT.

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?

Answer: Generally, the worker has only a few possibilities to gain necessary evidences for his or her statements. Therefore, the labour procedures have a particular way of answering to the claim. The employer must clearly determine which of the facts included in the claim he/she admits as true and which ones he/she denies or rejects. Moreover, the employer needs to express the facts that he/she considers convenient and that he/she will use in his/her defence. The facts deemed admitted are indicated in the claim and have not been rejected or undermined by any of the elements of the procedure (Article 135 of the LOPT). Thus, the law obliges the employer to appropriately reply to the claim. If he/she does not reply, then the employer will be attributed the burden of proof to which he/she did not legally reply. With similar legal consequences, if the employer does not appear at the preliminary hearing (mediation) or the trial hearing, the defendant shall be deemed confessed in relation to the facts presented by the plaintiff (Articles 131 and 151 of the LOPT).

Yes, the Court may impose presentation of evidences to the worker and employer, in the case either of the parties states that they have a document and evidence (Article 82 of the LOPT). The Court may also impose presentation of evidence to a third party when the worker or the employer ask the Court to require more information or copy of the documents (Article 81 of the LOPT).

2.2.7 Role of a lay judges in labour disputes, how active they are and how to avoid a possible partiality?

Answer: No, there are no lay judges.

2.2.8 Can Court ex officio issue temporary injunctions?

Answer: Yes. The labour judge is governed by the principle of the ruling judge of the procedure. Therefore, the LOPT empowers the judge to actively intervene in every step and stage of the process (Article 6 of the LOPT) and may issue court orders, such as the review of the libel (Article 124 and 134 of the LOPT), drive the proceeding (Article 6 of the LOPT), impose disciplinary sanctions (Articles 48, 122, 152 and 164 of the LOPT), order the examination of the evidence (Article 5 of the LOPT).

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)?

Answer: No, the judge is active in all the procedures as the law imposes the presence of the lawyer to be in trial. Also, in order to guarantee the enforcement of the law, the Public Defender of the Workers was created (Article 28 of the LOPT).

2.2.10 Is activity of Court guided only and solely in advantage of a worker or also of an employer?

Answer: The activity of the Court is guided in benefit of both, as the 1999 Constitution of the Bolivarian Republic of Venezuela states that the process is a fundamental instrument to justice (Article 257 of the CRBV).

2.3 How active can be appeal court judge (second and third instance Courts) in comparison to the judge on first instance Court?

Answer: This judge is less active than the judges on first instance Courts, both for mediation and trial, as they conduct the entire proceeding. However, it is common for an appeal court judge to interrogate the parties and order the examination of the evidence.

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).

  Answer: An individual worker or non-organised group of employees may suit an employer or a group of employers in a collective labour dispute in different ways: through the compilation of claims to demand their rights and social benefits, in the same libel and to the same employer or employers (Article 49 of the LOPT); through a petition for constitutional protection of the constitutional rights for workers; and through a petition of individual or collective interests (Article 29 of the LOPT).

  There are no regulations for mass actions disputes.

- 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?

  Answer: There are no rules that establish a duty to inform about the commencement of a legal procedure about which the court will decide. However, from the legal conditions that regulate unions, one can interpret that they must inform their affiliates about their activities, especially about the commencement of legal procedures.

3.2 Can Court ex officio issue temporary injunctions?

Answer: No, the labour court may only issue temporary legal orders when required by one of the parties (Article 137 of the LOPT).

3.3 Dispute of interests? Possibility of replacing the content of collective agreement with Court decision?

Answer: It is not possible to replace the content of a collective agreement with Court decision.

The labour collective convention shall not be longer than three years not shorter than two years and it might contain reviewable clauses for shorter periods.

Once the labour collective convention reaches it maturity, the economic, social and union conditions from which workers benefit will continue to be valid until another convention is agreed. The parties may, through agreement, extend the duration of the collective convention that shall not exceed one half of the period agreed for the previous convention (Article 435 of the LOPT).

3.4 In which cases and how the court is involved in mediating the collective labour disputes?

Answer: The Court must participate in the mediation of collective labour disputes in the cases in which a claim has been filed for: compilation of claims for violation of individual rights; violation of constitutional rights; and violation of individual and collective interest. How ever, there have been some extraordinary cases in which the Social Annulment

Chamber of the Supreme Court of Justice is involved in the mediation of collective labour disputes without a special claim being filed (for instance, the cases of Coca-Cola, Polar, etc.) with excellent results.

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)?

Answer: The Court doe not monitor respect of court decisions. The party must request the execution of judgement and the Court orders the voluntary implementation or forced execution. If one of the parties disrespects the decision, the other party must inform the Court.

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?

Answer: The decisions of labour courts have an important influence in the behaviour and decisions of workers and employers, as they take into account the jurisprudence of the labour courts in order to know the way the law must be interpreted and to conduct the labour relationships.

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?

Answer: No, the decisions taken by labour courts do not influence the legislation, as they only interpret the law. However, judges from instance courts might embrace the annulment doctrine established in analogous cases in order to defend the integrity of the legislation and uniformity of the jurisprudence. Therefore, they are important to determine the sense and reach of the legislation (Article 177 of the LOPT).

4.4 Does the Labour Court introduce and explain court decisions and court practice to public?

Answer: Yes, the labour proceeding is oral and public in all its steps and stages (Articles 2, 3, and 4 of the LOPT) and the judgments of first and second instance and annulment are dictated orally. The judge presents his decision and briefly explains it, and the he/she must publish the judgment in writing in the following five (5) days (Articles 158, 159, 165 and 174 of the LOPT).