

Access to Justice

A questionnaire for the ELCJ Meeting 21-23 September 2016, Oslo

General Reporter: Regine Winter, Judge, Federal Labour Court of Germany

Introduction

“Access to justice” could be understood in a broad or narrow sense. Typically it means having a case heard in a court or tribunal. With this in mind, the questionnaire does not include questions on law enforcement or settlement of labour disputes through mechanisms such as workplace grievance procedures, labour inspectorates and commissions, equality bodies or alternative dispute resolution through mediation, conciliation and arbitration outside state courts. Furthermore, in the light of some examples of change of conditions regarding access to justice which have been mentioned in the end of the last meeting, the focus of the questionnaire is rather on individual than on collective labour disputes. While taking into account that the court systems in our countries have been described last year (*XXIII Meeting 2015: “Judicial Ethics and Independence”, Question I¹*), questions in this respect are not included in the questionnaire. In the event that no report on “Judicial Ethics” had been presented for your country 2015, it might be useful to answer - in addition - the aforementioned first question of last year’s questionnaire.²

¹ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/meetingdocument/wcms_423451.pdf

² The first question of the 2015 Questionnaire on Judicial ethics and independence was the following: “Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction.”

QUESTIONNAIRE

I. Identification of cases

Some rights are easier to identify than others. It is quite likely that the average employee might consider legal action in situations of dismissal and outstanding wages. Cases with respect to rights in areas such as data protection, safety and health at work or anti-discrimination may be more difficult to identify.

1. Do employees have access to legal advice before trial?

Yes No

If you answered “Yes”, please provide a brief list or short description of the possibilities provided by the state, organizations, unions, (university) legal clinics, “virtual legal clinic” or/and others).

Please also specify whether the legal advice provided before trial is free or financially affordable.

Answer:

2. Does the state provide mechanisms to promote awareness on rights of employees?

Yes No

If you answered “Yes”, please provide some examples or a brief list:

Answer:

3. Are any other institutions providing such awareness-raising (or information) services on the rights of employees (e.g. labour administration, labour inspectorates, or other state bodies such as non-discrimination/equality bodies/ombudsman services)?

Relevant institutions might differ depending on types of claims – data protection, occupational safety and health (OSH), anti-discrimination, dismissal or outstanding wages which are indicated in the above descriptions. The obligations of employers in this area could also be mentioned here.

Yes No

If you answered "Yes", please provide some examples or a brief list:

Answer:

II. Legal proceedings – Structures, formal and financial conditions

1. An employee starting legal proceedings against the employer ...

- a. ... has to turn to the ... (please name the court/tribunal of first instance. If the answer depends on the subject of litigation, please name the options):

Answer:

- b. The employee may submit any dispute relating to the employment relationship to that court/tribunal of first instance (the court/tribunal has jurisdiction in all areas of individual labor/employment law)?

Yes No

If you answered "Yes", please provide a short description:

Answer:

- c. Average waiting time before the first hearing? Please specify whether the waiting time before the first hearing includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

- d. Average duration of the procedure in first instance? Please specify whether the average duration of the procedure includes in-court settlement options (e.g. mediation and conciliation procedures).

Answer:

2. Is it mandatory that the employee is represented in a labour court/tribunal of first instance?

a. In a labour court/tribunal of first instance it is mandatory to be represented by:

- a lawyer **Yes** **No**
- by others **Yes** **No**

If you answered “by others” with “Yes”, please provide a short description:

Answer:

b. No mandatory representation by a lawyer or others in a labour court/tribunal of first instance : **Yes** **No**

Please also specify whether it is common practice to establish legal representation (regardless of legal requirements):

Answer:

3. Do courts or other state bodies (government agencies) provide assistance in lodging a complaint (e.g. at a legal application office of the court/tribunal)?

Yes **No**

If you answered “Yes”, please provide a short description. Please also specify whether private actors (e.g. unions, NGOs or pro-bono lawyers) provide assistance in lodging a complaint.

Answer:

4. Does the principle ‘iura novit curia’ apply to the proceedings? (Is it the responsibility of the judge to establish the applicable law ex officio? [whereas the parties furnish the facts of a case])

Yes No

If you answered "No", please provide a short description.

Answer:

5. Financial formalities to be fulfilled to start legal proceedings? (Plaint fees or other fees to be paid? In advance/immediately? And if so: How much?)

Any applicable modifications to the existing financial formalities might also be captured (cost-sharing, exemption of or lowering fees for claimants who are not able to bear necessary costs).

Answer:

6. Other financial obstacles?

Yes No

If you answered "Yes", please provide a brief list or short description.

Answer:

7. Mandatory preliminary proceedings inside/outside the court/tribunal? (And if so: How long? Fees/costs? Obstacle or chance?)

Please clarify whether such preliminary proceedings include in-court settlement options (pre-trial conciliation/mediation).

Answer:

8. Language and disability as potential obstacle to access to justice

a. Is interpretation for the hearing available if necessary? Who pays for it?

Answer:

- b. Are there any specific barriers to access to justice for regular and illegal migrant workers?

Answer:

- c. Do persons with hearing and speech impairments have the right to choose to communicate through other means like sign language or technical communication aids (e.g. sound-accompanying signs)? Are there any costs arising in this regard?

Answer:

- d. Other obstacles/other types of support? (including accessibility of court buildings to disabled persons)

Answer:

9. Are there any other formal, non-financial conditions/obstacles to start legal proceedings in individual labour disputes?

Answer:

10. Conditions of access to the next instance(s):

- a. Name of second instance court (in case of different courts depending on the topic: please name the competent court(s) for cases of dismissal and outstanding wages)

Answer:

- b. Legal limit for access? (And if so: amount?) Other criteria of restriction?

Answer:

c. Mandatory representation?

Yes No

Please provide a short description.

Answer:

d. Another fee to be paid? In advance/immediately? (And if so: How much?)

Yes No

If you answered "Yes", please provide a short description.

Answer:

e. Name of third instance court – if at all - and conditions of access:

Answer:

11. Who has to bear the costs and fees at the end?

a. The winning party pays nothing, the losing party pays all.

Yes No

Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

i. Cost sharing, if partly unsuccessful?

Yes No

If you answered "Yes", please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

- ii. Reimbursement of court fees paid in advance by the – at the end successful - claimant?

Yes **No**

If you answered “Yes”, please provide a short description. Please specify whether the answer to this question differs in the first-instance courts and appeals.

Answer:

- iii. If losing the case: Does the employee have to bear the employer’s lawyer’s fees?

Yes **No**

If you answered “Yes”, please provide a short description (For all instances?).

Answer:

- b. Other models: ...

Answer:

12. Financial resources/legal aid in individual labor/employment law cases

- a. Legal aid:

- i. Does legal aid, provided by the state, exist?

Yes **No**

If you answered “Yes”, please provide a short description.

Please specify whether public legal aid is actually used (including - if available - information on the volume/amount of public legal aid provided per year). Obstacles?

Answer:

- ii. Legal aid: Are there any costs involved for the employee (e.g. a contribution)?

Answer:

- b. Other financial resources for legal proceedings?

- From commercial insurance companies?

Yes No

- Financial assistance/aid from organizations, trade unions?

Yes No

Short assessment: predominant/prevalent resources?

Answer:

- 13. Recent trends and developments changing individual labour disputes** (in respect of e.g.: court procedures, other obstacles or facilitations for access to justice in individual labour disputes).

Answer: