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The Role of Collective Bargaining

Questionnaire
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A. The legal framework of collective bargaining

1. Constitutional provisions

The right to collective bargaining is recognised by Article 37.1 of the Spanish Constitution of 1978 (CE), according to which "the Act will guarantee the right to labour collective bargaining among the workers and employers' representatives, as well as the binding efficacy of collective agreements."
The right to collective bargaining is enacted in Title I, Chapter 1, Section 2 of constitutional text, as a social and economic right. According to Article 53.2 CE this location means that the right legal implementation must be carried out by an Act. In addition, this right binds all public powers (Parliament, Government and Judiciary) which consequently have to respect and to guarantee its exercise.

2. Legislation

a) Collective bargaining is regulated by Title III of the Workers' Statute (Act 1/1995, of 24 March).

b) ----------

c) The labour courts as well as the Constitutional Court have played a decisive role in the creation of a category of collective agreements which was not envisaged by the Workers' Statute, therefore called "extraestatutarios" collective agreements.
Although the Workers' Statute only confers the right to collective bargain to those trade unions that have a certain percentage of representativeness (see *infra* question 8.a), the Act should have granted this right to all trade unions. In fact, the faculty to collective bargaining is part of their fundamental right to freedom of association [Articles 28.1 Spanish Constitution and 2.2.d) Freedom of Association Organic Act of 1985], which implementing statute law cannot restrain.
Therefore, and with the aim to save the constitutionality of legal implementation of Articles 28.1 and 37.1 of Spanish Constitution contained in the Workers'

Statute, the judicial and constitutional doctrine created this category of collective agreements, which can be negotiated even by minority trade unions. However, the effects of these agreements are more limited than those of collective agreements that comply with requirements set by Workers' Statute, since their efficacy is not *erga* omnes.

3. Types of collective agreements

a) Except for the rules concerning the parties who can negotiate them, the maximum number of members of the bargaining commission, and the priority given by the Workers' Statute (e.g. Articles 15 and 84) to supra enterprise collective agreements to address certain matters, there are no substantial differences between these and the ones negotiated at the enterprise level.

b) The so-called "collective agreements for bargaining" are achieved by the most representative trade unions and employers' associations, are not intended to set the terms or conditions of employment, but the rules for the future bargaining in the sector (respecting the distribution of subjects between collective agreements at different levels, or the solution of collisions between two or more collective agreements). They are envisaged by Article 83.2 Workers' Statute.
In addition, Article 83.3 other collective agreements refer only to certain matters. This is the case of ASEC II, Agreement for the Extra-judicial Settlement of Labour Collective Disputes, achieved by most representative trade unions (CCOO and UGT) and employers' associations (CEOE and CEPYME) in 2001.
Another product of the collective bargaining is the workforce agreement, concluded by the workers' representatives at the workplace and the employer. Workforce agreements do not address a general but a partial regulation of certain terms or conditions of employment. Although, these agreements do not follow the collective bargaining process provided by Title III of Workers' Statute, their effects are, as a general rule, *erga omnes*, and when negotiated instead of the collective agreement their efficacy is normative.

4. Conditions of validity of a collective agreement.

According Article 90 of Workers' Statute a collective agreement must be written, and submitted to the competent authority for their registration and publication. In addition, Article 85.3 establishes that a collective agreement must contain certain clauses respecting the signatory parties, the scope of application, the commission in charge of its interpretation and application, the denunciation and period of notice requirements, etc.

For a collective agreement to be valid as an *erga omnes* agreement the above-mentioned requisites are to be filled. Otherwise, it could still be valid as an "*extraestatutario*" collective agreement (see *infra* question 5), as long as its substantive contents does not infringe the Constitution, the statute or statutory law, or the "estatutarios" collective agreements in force in its scope of application.

5. Effects of a collective agreement.

Under Spanish legal system, valid collective agreements (whatever its nature) are legally binding (Article 37.1 Spanish Constitution). As to their nature and personal effects, we distiguish:

a) "*Estatutarios*" collective agreements, i.e. those concluded according to the rules respecting the bargaining process, the parties' representativeness, the written form, registration and publication set by Title III of the Workers' Statute. They are negotiated by trade unions who accrue a certain representativeness in terms of a percentage or number of workers' representatives obtained by them. They have *erga ommes* effects (Article 82.3 Workers' Statute) and constitute a source of law [Article 3.1.b) Workers' Statute].

b) By contrast, "*Extraestatutarios*" collective agreements do not comply with the rules set by the Title III of Workers' Statute. Their effects are limited to the signatory parties and their members. There is debate about their nature: whereas some Constitutional Court decisions sustain their normative nature (they would be source of law), Spanish Supreme Court states their contractual nature.

6. Extension of collective agreements.

Third parties who did not sign an "*extraestatutario*" collective agreement can sign it *a posteriori*. So do the individuals non members of signatory trade unions or employers' associations.

As to collective agreements concluded according with the Workers' Statute, given their *erga omnes* efficacy they apply to all employers and workers in the branch of industry or sector to which they refer. As a result, there is no need to extend the agreement to non members of employers' association in the sector or branch of industry affected by the collective agreement.

The extension of an "*estatutario*" collective agreement in force envisaged by the Workers' Statute, is a mechanism by which, the competent authority extends its application to one or more enterprises or to a sector or part of it not included in their scope of application. The extension only applies to those sectors or enterprises where there are no parties enabled to negotiate collective agreements (Article 90.2 Workers' Statute).

The lengthen of the initial scope of an "*estatutario*" collective agreement in force is as well possible by means of the voluntary adhesion of the parties who have the right to negotiate a collective agreement in a certain scope, but willing to save negotiations, simply decide that the other collective agreement will apply to them (Article 90.1 Workers' Statute).

B. The parties to collective bargaining

7. Depending on the scope of the collective bargaining the parties are:

a) With regard to enterprise collective agreements, either workers' representatives (staff delegates or works councils) or union representatives at workplace will negotiate with the employer himself or his legal representative.

b) As to supra-enterprise collective agreements, trade unions or their associations, on the workers side, and the associations of employers, on the other side negotiate them.

8. Workers' representation by a trade union:

a) Trade union representativeness is a rather important issue in Spain.

i) In Spanish legal system the representativeness of trade unions is determined by the number or percentage of workers' representatives they have obtained in the past elections conducted at workplaces.

1. Trade unions have the right to take part in the bargaining of supra enterprise collective agreements provided:

a. They are most representative unions, which are:

- At least the 10% of workers' representatives elected in all enterprises of national territory and in all sectors of activity, were presented by these unions [Article 6 Freedom of Association Organic Act, and Article 87.2.a) Workers' Statute]. Nowadays these are CCOO and UGT. The mentioned trade unions associations can negotiate all collective agreements whatever their scope is (represented by the relevant union federation in each sector of activity).

- At regional level the most representative trade unions are ELA-STV in the Country Vasc and GIGA in Galicia, since they obtained at least the 15% of the total number of workers' representatives elected in all enterprises of the relevant regional territory and in all sectors of activity, and no less than 1.500 representatives (Article 7.1 Freedom of Association Organic Act). They can negotiate collective agreements the territorial scope of which includes the mentioned regions (Article 87.4 Workers' Statute).

b. They are cuasi most representative unions, that is to say, unions who accrue at least a 10 % of the total number of workers' representatives elected in the scope of the collective agreement to be negotiated the 10%

of workers' representatives elected in all enterprises of national territory and in all sectors of activity, were presented by these unions [Article 7.2 Freedom of Association Organic Act and Article 87.2.c) Workers' Statute].

2. The trade union does not take part directly in the bargaining of enterprise collective agreements, but through their representatives at the workplace (the so-called "union sections" established by union memberships at the workplace affected).

a. In order to bargain enterprise collective agreements, such union sections has to accrue that the trade union they belong to counts with the majority of workers' representatives (staff delegates or works council members) at the enterprise.

b. As to those collective agreements the scope of which does not affects to all workforce, they will negotiated by the union section elected directly by the majority of workers affected by the future agreement (Article 87.1 Workers' Statute).

ii. Given that the representativeness of trade unions determines their prerogatives and the extent of some rights (to collective bargaining, to institutional representation, to call for workers' representatives elections at workplaces, to bring claims before labour courts, etc), this issue affects the essential contents of their freedom of association. Consequently, when the representativeness of trade unions for collective bargaining purposes is challenged, their very fundamental right to freedom of association is being challenged. As a result, concerned trade unions can (in addition to call strikes or attempt mediation or arbitration) bring a claim before a labour court, being the appropriate procedure the one provided for "the protection of the rights of freedom of association and other fundamental rights", under Articles 175 and subsequents of Labour Procedural Act.

b) Where there is a multiplicity of trade unions which accrue the above-mentioned representativeness, all of them have the right to take part in the collective bargaining (Article 87.5 Workers' Statute). The exclusion of one of these trade unions will be deemed an infringement of its freedom of association.

i. However, the share-out of members of the bargaining commission among these trade unions will be set in proportion to the number or percentage of workers' representatives out of the

total of representatives elected in the bargaining scope that each one accrues (Article 88.1 Workers' Statute).

ii. Trade unions that not accrue the above-mentioned percentage of representativeness, cannot negotiate collective agreements with *erga omnes* efficacy which have normative nature ("convenios colectivos estatutarios"). Nevertheless, as the right to collective bargaining is an essential part of freedom of association (art. 2.2.d) Freedom of Association Organic Act), the Constitutional and Supreme Court have stated the right of minority unions to negotiate collective agreements of limited efficacy (the so-called "convenios colectivos extraestatutarios").

iii. Respecting the latter type of collective agreements, which only apply to signatory parties and to their members, they are usually opened to third parties adhesion. In this case, a trade union adhered to such a collective agreement has the right to bring claims seeking its application, given the union direct interest in this litigation (Article 152 Labour Procedural Act).

c) Can a union represent non unionized workers for collective bargaining purposes? As long as the trade union enjoys the percentage of representativeness that is required to negotiate *erga omnes* collective agreement, the union will bargain for both unionized and non unionized workers affected by the agreement.

d) Can a collective agreement be applied to non union members? As said before, collective agreements negotiated according to rules set by Title III of Workers' Statute have *erga omnes* effects (Art. 82.3 Workers' Statute), so that it applies to all workers included in the scope of the agreement, being irrelevant if their membership to the signatory trade unions or not. With respect to collective agreements which do not comply with the above-mentioned rules of negotiation, i.e. "extraestatutarios" collective agreements, in principle they apply to signatory parties and to workers and employers associated to them. However, quite often these agreements accept both the collective adhesion of unions or employers associations, and the individual adhesion of workers and employers.

e) What procedural rights and obligations are granted to Trade Unions that have signed a collective agreement? Trade unions that have signed a collective agreement can initiate litigation on their own behalf, when the claim concerns a collective dispute respecting the interpretation or application of the agreement (Article 152 Procedural Labour Act).

The right of trade unions to initiate litigation concerning individual claims on the workers` behalf is not determined by the fact that they have signed the collective agreement, but by the trade union's representativeness or the affected worker's membership.

In conclusion, trade unions take part in labour proceeding:

i) On their on behalf, bringing claims relating collective disputes, i.e., those aimed to obtain the interpretation in abstract of statute law or collective agreements;

ii) As representatives of their members, bringing claims on individual disputes; in so doing, trade union needs the member consent, which may be express or implied (the worker does not deny it expressly, when requested by the union) (Article 20 Labour Procedural Act).

iii) In addition and co-operating with the principal claimant, the worker who brings an individual claim concerning the freedom of association before labour courts. Nonetheless, the power to bring the claim, to give up, to achieve an agreement in judicial conciliation and to appeal remains in the worker. This power is only conferred to the most representative trade unions (Article 14 Freedom of Association Organic Act, and Article 175.2 Labour Procedural Act).

f) What procedures and recourses are available in your country for unions or employers to demand the enforcement of an agreement by the other party? The individual worker has the right to bring and individual claim to this end. With regard to the right of trade unions and workers' representatives to enforce the collective agreements, if it is possible, they should make use of the special procedure for collective disputes, provided for by Articles 151 and subsequents of the Labour Procedural Act. This procedure is intended to claim a certain interpretation or the application of statute or statutory law, collective agreements, workforce agreements or enterprise practices.
As a general rule, the judgement has a *cuasi* normative nature and is not enforceable by itself, therefore individuals must bring a claim before the labour court to make the judgement apply or enforce in his/her individual labour relationship. The labour court is then bound by the judgement achieved in the previous procedure for collective disputes. However, there is debate about the efficacy of the judgement, when the trade union or the workers' representatives claimant seeks, on top of the application of the law, the defendant's condemn. In this case some authors, on the basis of the Constitutional Court Decision 92/1988, hold that the judgement should be directly enforceable, without having to bring another claim in order to obtain the individual enforcement of the collective judgement.

g) What remedies are available when it is held that one of the parties is in breach of a collective agreement by which it is legally bound? If the employer does not comply with the judicial decision, the labour court can impose compulsory fines

to him/her, until the employer follows the measures required by the judgement (Article 239 Procedural Labour Act).

9. Work agreements concluded by a non union body:

a) Workers's representation at establishment level. The representation of all workers at establishment level, by representatives elected by all the workers of the establishment whether unionised or not is envisaged by Title II (Articles 61 to 76) of Workers' Statute. Under the referred regulation, all employees (provided they are at least 16 years old and accrue an employment period of one month) can vote the candidates (at least 18 years old with an employment period of six months). The number of representatives depends on the workforce size:

- From 11 to 49 employees, there will be 1 (until 30 employees) or 3 staff delegates (Article 62 Workers Statute);
- From 50 employees in the staff, there must be a works council with 5 members or more (in accordance with the scale established by Article 66 Workers' Statute).

b) Relationship between elected workers' representatives and unions. The largest part of the candidates are expressly supported by trade unions, although there can be also independent candidates (Art. 69.3 Workers Statute).
The reason why so many candidates are presented by trade unions to workers' representatives elections is because their representativeness does not depend on the membership, but on the percentage of candidates supported by them were elected as workers' representatives. And this explains why the right to propose candidates for workers' representatives constitutes an essential part of the fundamental right of freedom of association (Article 2.2.d) Freedom of Association Organic Act).
On the other hand, workers' representatives and shop stewards enjoy the same guarantees and facilities. Shop stewards have also the right to attend to works councils' meetings, with voice but without vote (Article 10.3 Freedom of Association Organic Act).

c) Workers' representatives competences. The workers' representatives have a wide range of competences regarding rights to receive information from the enterprise and be heard in respect with some issues, recognised by Article 64 Workers' Statute and others. They also are able to call for strikes at the enterprise level, according to Art. 3 *Real Decreto Ley* 17/1977, of 4th March (DLRT).
As to collective bargaining, workers' representatives can negotiate collective agreements at enterprise level (Article 87.1 Workers' Statute), as well as workforce agreements.

d) Enterprise collective agreements are the majority in Spain, as confirms the fact that the number of such agreements is 3.704 over 5.110, which means a total percentage of 72.5%. As to the workforce agreements, they were promoted by the Workers' Statute

amendment that took place in 1994, deregulating some conditions and leaving its regulation to the collective agreement or in absence of it, to the workforce agreement.

e) As to **rules or procedures to settle disputes concerning the interpretation or application of enterprise collective agreements**, see *infra* question 11.h).

f) These agreements are enforceable before labour courts. The rules concerning the right to bring litigation before courts and measures to be taken by them have been described *supra* in questions 8.f) and g).

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

10. Statistical information. According to the data provided by the Labour and Social Affairs Ministry, the number of collective agreements in force in 1999 was 5.110:

- Of which 3.704 (72.5%) were enterprise level agreements, while there were 1.406 (27.5%) agreements at other levels.
- Those collective agreements covered 9.008.053 workers, which represents about 82 % of Spanish workforce at that moment (in accordance with the previous Workforce Survey figures).
- The number of enterprises covered by collective agreements was 1.122.608.

Statistical information for 2000 and subsequent years is not completed.

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

a) Terms and conditions of employment, such as wages, overtime, hours of work , rests and annual leave, and job classification are generally addressed in collective bargaining.

b) Whereas **provisions concerning the probation** are not dealt with in collective agreements, other subjects are with different extent addressed. Thus, matters of **discipline** are widely regulated. As to provisions concerning the **fixed-term contracts**, they are usually confined to a few points as their **duration**, the **number of apprentices** to hire, the works or tasks which can be covered by such contracts, the amount of a **termination award**...

c) Health and safety at work is dealt with in 79% of collective agreements. In those cases, the most common clauses refer to the right to an annual health assessment to be paid by the employer, the constitution of a Health and Safety Committee, and the design of programmes for risk prevention and necessary formation in this field.

Subjects mentioned in para. d) (training), e) (workers' welfare) and f) (workers' right in the interprise: right of wxpression, data protection...) are not sufficiently addressed by collective bargaining, although recent Agreement for the Collective Bargaining (achieved by the most representatives trade unions UGT and CCOO and employers' associations in 2002) includes a compromise to pay more attention to those matters.

g) Trade unions rights (e.g. check-off clause and paid time off) and facilities to be afforded to union stewards are also normally dealt with in collective agreements.

h) With relation to the **settlement of disputes** this is a subject which used to be addressed to some extent by collective agreements as authorised by Article 91 Workers' Statute. Nowadays however, after the achievement of the ASEC at a national level and the like Agreements at a regional level, collective agreements clauses on this matter often consist of the mere adhesion to those Agreements containing special mechanisms of mediation and arbitration.

i) According to Article 82.2 Workers' Statute collective agreements can set **peace obligations.** This is not a very common clause in collective agreements though.

j) Interpretation and administration of the agreement is normally conferred to a permanent commission whose members are representatives of the two parties involved in the bargaining. The collective agreement must make the designation of those members as well as the determination of the commission functions, under Article 85.3.e) Workers' Statute.

k) The collective agreement must provide for the **procedures for denunciation and renewal of the agreement** as well, according to Article 85.3.d) Workers' Statute.

l) In addition to the above-mentioned subjects collective agreements can improve the **Social Security protection** (Article 39 Social Security General Act of 1994), providing for pension schemes, or for the temporary lengthen of benefits or the increase of the amount of incomes to be received by employees during certain situations of sickness, being the employer in charge of the improvement.
Some collective agreements also recognise other **social and cultural benefits** to employees such as grants and compensation of some medical expenses.

12. Terms and conditions of employment are addressed by both kinds of agreements, although some points may only be dealt by workforce agreement in absence of relevant provisions in the collective agreement (e.g. job classification and hours of work).
Other subjects like trade unions rights and facilities, peace obligation and settlement of disputes are normally dealt with in collective agreements.
In turn, some matters respecting the enterprise reorganisation by reasons of an economic, technological, structural or similar nature are usually addressed by workforce agreements. This is the case of: 1) collective change of geographical location of work (Article 40 Workers' Statute); 2) other collective substantial modifications of terms and conditions of employment (Article 41.2 WS); 3) collective dismissal or redundancy (art. 51 WS); 4) merger pacts or homogenisation pacts, i.e. workforce agreements intended to unify provisionally some terms and conditions of employment of those workers transferred as a result of a process of transmission of enterprise or part of it, while a collective agreement for all the staff is concluded (Article 44.4 WS).

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

not allowed to dealt with procedural and tax matters (the so-called "public order matters"), nor can they provide for more types of temporary and fixed-term contracts than those established by the Workers' Statute and statutory provisions which implement it. Neither can collective agreements affect the rules concerning the bargaining process as set by the Workers' Statute, except for the collision or interference between two or more current collective agreements and the distribution of matters to be dealt with in each bargaining level.

14. In collective agreements, are the wages and other conditions of employment minimum or standard terms of employment? Collective agreements set minimum terms of employment, insofar as the contract of employment cannot worsen labour conditions provided for by the collective agreement (Article 3.1.c) Workers' Statute). Obviously, the contract can improve them. Hence, the parties of the individual relationship cannot relinquish their rights recognised by collective agreement. Clauses in individual employment contracts are null and void as long as they contain the waiver or any other restriction to such rights (Article. 3.5 Workers' Statute).

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

15. By what means are collective agreements achieved? When bargaining is not successful, parties can try the mediation or arbitration in order to settle the existing conflict.

As a general rule, an agreement of both parties engaged in the dispute is required to start a mediation or arbitration process. However, in those sectors of activity adhered to the ASEC II, the above-mentioned agreement to attempt the mediation is not always needed. In fact, the ASEC II provides that mediation is compulsory in two circumstances: at the request of one of the parties, and (even without the consent of any of them) prior to go to strike. Only the mediation process is compulsory in such cases, but not the recommendations made by the mediator, given that both parties retain the right to consent to them or not.

The agreement by which parties accept the recommendations made by the mediator, or in case of arbitration, the award by which the arbitrator settles the dispute, have the efficacy of a collective agreement.

With the aim to put pressure on the employers' representatives to accept a certain agreement or clause of an agreement, workers' representatives or trade unions engaged in the bargaining have also the right to call a strike.

16. Can a labour court stop a strike or other form of industrial action? Under Spanish legal system labour courts cannot stop a strike or other form of industrial action. Furthermore, they only are competent to declare if the stoppage is lawful or unlawful when considering a claim respecting its effects, e.g.:

1) when the validity of a certain decision taken by the employer as a result of the strike (e.g. lockout, deduction of wages, dismissal or other sanctions, etc.) is challenged by the worker/s affected; or
2) when the employer claims damages, asking for an award of compensation of loss sustained as a consequence of industrial action which the claimant deems unlawful.

In conclusion, the strike will end either by an agreement between the employer and the strike committee (possibly concluded by means of mediation or voluntary arbitration), or without such agreement, when strikers simply give up. In case of agreement, it has the same effects of a collective agreement, according to Article 8.2 DLRT. The strike could also end by a compulsory arbitration decided by the government authority, when its long duration and serious effects on the national economy make this advisable (Article 10 DLRT). The Constitutional Court in its Decision 11/1981, of 8th April, has held that this arbitration could only be constitutional when the arbitrator appointed by the authority is impartial.
It is worth noting that Spanish labour courts have not the power to issue injunctions to restrain the industrial action.

17. Can a labour court mediate in a collective dispute? First of all, it must be borne in mind that Labour Courts have no power to settle conflicts of interests as they are intended to the creation of law, but only to solve conflicts of law, concerning the interpretation or application of existing law.
Spanish labour courts cannot mediate in a collective dispute. Procedural Labour Act only provides for a phase of judicial conciliation before labour courts in individual disputes. Such conciliation is tried just before the hearing or trial (called "*acto de juicio*", literally "act of judgement"). Settlements so reached are enforceable as judicial decisions.

18. Can a labour court impose binding arbitration? Labour courts cannot impose binding arbitration. As was stated when answering question 16, and only under exceptional circumstances, this power is conferred to government authority, by Article 10 DLRT.

E. Interpretation of collective agreements by the labour courts

19. There are no specific rules of interpretation of collective agreements. However, given their hybrid nature (they are at the same time a contract and a norm), rules for the interpretation of both written law and contracts apply to them. Rules of interpretation of written law are contained in Article 6.1 Civil Code 1889, whereas interpretation of contracts is regulated by Articles 1281 and following of the same Act.

20. Is there any ranking between the wording, motives, sense of a clause or term in a collective agreement? According to the above-mentioned rules, tribunals should pay attention in first place to the wording of the concerned clause (the so-called literal interpretation) (Articles 6.1 and 1281 CC), as well as to its context, that is to say, the previous and subsequent clauses (systematic interpretation) (Article 1285 CC).
However, when the wording seems to be clearly contrary to the intention of parties the latter prevails (Article 1281 CC). In similar sense, Article 3.1 CC states that the interpretation of rules will find out the aim and purpose intended by the rule.
The intention of parties may be inferred from their acts, prior (i.e. the allegations made by the negotiation committee during the bargaining process) and after the agreement (Article 1282 CC). To the same end, the court should take into account the social context or circumstances surrounding the parties when the agreement was achieved, and also consider precedent agreements (historical interpretation) (Article 3.1 CC).

Finally, when a clause have two or more possible meanings, the ambiguity is to be resolved choosing the one which favours the efficacy of the clause (logical interpretation) (Art. 1286 CC).

21. Is the common, allowed or prohibited, that a labour court asks the parties of the collective agreement for their interpretation? The parties who sign the collective agreement lay out a commission in charge of the interpretation of it (Article 91 Workers' Statute). Representatives of both parties (trade unions and employers' associations) compose this body. The collective agreement itself may establish the duty to ask for the interpretation of the commission, before submitting the dispute for the labour court consideration. Even though the labour court is not bound by the commission's opinion, it will usually take into account its point of view, since this body represents the parties who bargained the agreement.

22. Is a labour court allowed to extend or restrict the rules or terms of a collective agreement? The labour court interpretation of the rules or terms of a collective agreement may be restrictive or extensive, depending on the nature of the rights affected. Thus, the interpretation of clauses that impose limits to the exercise of fundamental rights or freedoms must be restrictive. Rules of collective agreements respecting matters of discipline at work (i.e. description of those conducts, which are deemed as faults) are subject to strict construction as well.
In order to save the constitutionality of a rule submitted to its consideration, the Constitutional Court is allowed to impose a certain interpretation, even in clear contradiction of its wording.

23. How much or how often do labour courts deal with the interpretation of collective agreements? Unfortunately, we have no relevant statistical information with respect to this matter.

24. Are labour courts allowed to void a "not interpretable" (i.e. extremely unclear) term of a collective agreement? When interpreting a collective agreement, the labour court has to decide whether to grant or not the interpretation alleged by the plaintiff, and to what extent. In doing so, it might well happen that the court holds that the pretended interpretation may not be inferred from the concerned clause or term, because the court considers that its real meaning is another, or because the clause makes no sense given its lack of clearness. In this case, the court is not allowed to void the not interpretable clause but to reject the claim.
A clause of a collective agreement may only be declared null and void by labour courts, when its validity has been expressly challenged, by any of the two reasons envisaged by Articles 161 and 163 Procedural Labour Act *(Royal Legislative Decree 2/1995 of 7th April)*:

a) Its illegality, when it is alleged that a clause infringes any constitutional right or freedom or imperative statutory provision; or
b) It is detrimental to the rights of third parties.