LABOUR DISPUTE SETTLEMENT

A comparative legal overview of extra-judicial and judicial procedures in the European Union, Switzerland and the countries of South Eastern Europe

Wiebke Düvel
Isabelle Schömann
Grigor Gradev
Stefan Clauwaert

With contributions by Judit Iványi Czugler and Jean-Claude Prince

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Foreword

On 1 May 2004 the European Union welcomed into its midst ten new member states. When reflecting on this historical moment, it should not be forgotten that two more south eastern European countries still await entry to the EU. With its enlargement the EU acquired new borders and new neighbours further east. Towards the countries of the western Balkans the EU has developed a specific regional approach in the form of a stabilisation and association process.

The ETUC considers that trade unions have their role to play and a responsibility in this stabilisation and transformation process. The ETUI has been supporting the local trade unions in facilitating the process of institutionalisation of the social dialogue in the region through the development of the legal base of labour relations and related areas of economic and social reforms. In 2002 the NETLEX (the ETUC's trade union legal experts' network) was regionalised, involving the creation of a new network for trade union legal experts in the countries of former Yugoslavia and in Albania, Bulgaria and Romania. This project is a platform designed to enable trade unionists to discuss issues of mutual interest and to exchange information and ideas. Its aims are to collect findings from the region and to disseminate relevant information, advice and analysis of labour law issues; to build direct contacts between trade unions in the enlarged Europe; and to provide training for trade union lawyers.

In its second year of work the network focused mainly on the subject of labour dispute settlement, looking at both out-of-court resolution – conciliation, mediation and arbitration – and the more traditional judicial approach via labour courts. Two regional conferences dealt with these subjects, as well as national meetings which have taken place in Bulgaria, Romania and Albania.

This second publication to be issued under the project – after ETUI Report 78 entitled *Labour relations in South East Europe – A legal overview in 2003* – adopts a new approach. This time the report is intended to serve as a "guide" for trade unionists in the region in the context of reflections on how best to set up systems for labour dispute settlement. The report provides information on the above-mentioned subjects which formed the major focus of the project in this second year.

Thanks are due to the Swiss Agency for Development and Cooperation for its assistance – within the framework of the Initiative for Social Cohesion of the Stability Pact for South East Europe – in funding this project which will deal, in its third year, among other things, with the question of the informal economy in the region.

Henning Jørgensen
Director of the ETUI

June 2004

Introduction

This publication continues the analytical overview of the legal frames which provide the basis for development of industrial relations and social dialogue in the region of South Eastern Europe. It addresses some of the challenges identified earlier in 2003, but in a more focused and detailed manner and in a user-friendly form – as a reference source for practical implementation. It is also underpinned by the results of the discussions on the systems for alternative labour dispute resolution – labour courts, arbitration, conciliation – held at three workshops in 2004 in Albania, Bulgaria, Romania and at a Regional Conference in Bucharest.

The institutionalisation of systems for arbitration and conciliation advanced rapidly in some countries in the region and had produced its first results by 2003. Work in this area has continued and the network selected, as the main topic for its activities for 2004, the development of efficient labour court systems in the countries of the region. The events at the beginning of 2004 confirmed both the correct orientation of this choice and its timeliness. During the first half of the year existing legal provisions in that area in Romania were revised and amended in an attempt to make them workable and efficient in real-life terms. In Bulgaria, following the workshop held in the framework of the project , a working group comprising experts from the ministries of labour and justice, employers and trade unions was set up to start work on designing the system of labour courts and drafting the necessary legislation for implementation. In Macedonia, Serbia and Albania, the need to set up labour courts has been recognised and established as a policy objective by the economic and social councils or in agreements concluded between the government and the social partners.

The importance of the efficient operation of such systems in the region cannot be overestimated. Bulgaria provides a clear example in this respect. It has completed the negotiations for EU membership, i.e. the legislative frame and main institutions of labour relations are basically compatible with EU standards. Even so, the Minister of justice raised alarm at the workshop in Sofia by referring to the figure of 16,000 new cases brought to court in the year 2003 alone. The overwhelming number of cases – probably 90% or more of them – concern the basic areas of the employment relationship, i.e. job security (illegal dismissals), wage payment (unpaid wages) and social security (unpaid contributions to the pension and health funds). And this situation arises, what is more, in a system where the Labour Code (adopted in 2001) allows, in the words of the then minister of labour, more than a hundred ways of cancelling an employment relationship in a legal manner .

Yet this picture represents no more than the visible part of the problem. A substantial number of cases never reach the stage of court procedure for a wide range of reasons that represent a powerful disincentive to people in pursuing their rights, especially where minority groups are involved. To mention a few of the more important:

- The generally low level of trust in public institutions.
- Lack of awareness of rights and information on how they can be asserted in practice, especially in the SMEs (no trade unions) and in the countryside.

- Lack of resources available for such purposes, especially in the countryside where the cost of travelling to a town where there is a court may make it out of the question even if court proceedings are free of charge.
- The logic of survival strategies which inevitably guide choices in such circumstances, i.e. the scarce reserves need to be used for finding a new job as soon as possible, rather than in legal exercises with a questionable outcome, even if the case is won.

Given the duration of the process – on average a court case takes between 1.5 and 5 years to reach a final solution – it appears probable that more than 2% of all those working under a contract of employment (totalling in Bulgaria some 2 million in 2003) have lived with their own and their family's lives under the shadow of legal uncertainties. It must be obvious that this does not contribute to a culture of consensual labour relations, social stability and trust in the institutions on the one hand, and between the social partners on the other.

The impact of these phenomena directly affects attitudes towards reform policies or EU accession and additionally complicates the challenges of the transition/accession process. As the European Bank for Reconstruction and Development (EBRD) has put it, in a clear-cut observation of the first ten years of transition, "The central lesson of transition is that markets will not function well without supporting institutions, a state that carries through its basic responsibilities and a healthy civil society". Within all transformation policies, institution-building has been the main pillar of reforms in every area of systemic change – political, economic, and social. The EBRD report is particularly concerned about developments along these lines: "Institutional arrangements which may appear sound from a formal or written perspective (for example, legislation) may be undermined by patterns or codes of behaviour which prevent them from functioning effectively" . The operation of the judicial system in the area of labour law in transition societies may well be a case in point.

One of the key roles of the courts in regulating labour markets and industrial relations is to delineate a field within which legal provisions and agreements by the parties concerned lead to accepted standards of behaviour, applied across the board, and prevent individual players from contravening or eroding these standards – i.e. from moving outside the field or creating alternative ones. In other words, the judicial system is also an important source of incentives to recognise the collective interests of each of the two sides of industry and to encourage their organised representation, i.e. to exercise their "voice" function in managing the labour relations systems. In the conditions of "transition" economies and societies, however, these incentives may take on a different nature.

The core of the problem is that labour cases are dealt with by the system of general courts, which are overloaded with work at a time of total overhaul of all societal systems and the lives of each family or individual. The current situation leads to fragmentation of the influence of labour-dispute resolution which should, by virtue of a cumulative process, lead to the definition of well-known and recognised standards in the management of labour relations. The second key dimension is the time scale of the procedures. This is invariably long, and often too long for the effects of the final resolution to have any meaningful impact on the initial problem, and hence to convince the actors of the need for standards and agreements. This is where the current combination of judicial systems with the still only emerging procedures for voluntary arbitration and conciliation can quite often generate paradoxical outcomes.

The current pattern of operation of the courts, rather than pressing the actors into compliance with the law and involvement in organised interest representation, is actually providing an easy "exit" option: too often the costs of continuing the ongoing employment situation outweigh in practice the costs of violating the labour law and the ensuing court proceedings, appeals, delays and assured negative outcome for the employer. In this way, deviation from organised representation and legal violation turns into a viable single-employer strategy, an alternative field of action to social dialogue, diluting the need for standards and the belief in rule of law in society. The repercussions, in a longer-term perspective, can go far beyond the individual case, preventing accumulation of "social capital" and contributing to the obstacles to efficient functioning of the market and the state, as underlined also by the EBRD.

Developments in 2004 point to a process of recognition of the challenges in this area and to some degree of readiness on the part of government and social partners in the region to take action towards developing effective arbitration, conciliation procedures and specialised labour courts within the judicial systems. At the same time, any serious approach needs to recognise that this is not a simple project that can deliver magic outcomes within a short time. It involves important institutional and financial adjustments and, at the least, necessitates the introduction of technology to transfer existing cases to a new set of procedures (involving the social partners) without jeopardising equal opportunities in each case, the functional linkages of first and second instance courts and appeals procedures, etc. As in the other areas of reform policies, designing the system to suit local conditions and the logical sequence of steps for implementation will be of crucial importance. These will need to be clearly specified and based on as broad a consensus as possible. To this end, governments, trade unions, employers, and the legal profession, should all be involved in the process from the outset.

This publication is intended as a modest contribution to facilitating the work of establishing viable labour courts and arbitration and conciliation systems in South Eastern Europe. As it has been obvious that practical activities in the area will continue across the region in the future, this publication is being translated into Serbian and Albanian in order to reach a much wider circle of users.

Grigor Gradev

ETUI Project Coordinator
ETUC Coordinator for Stability Pact for SEE

Part I

Alternative dispute resolution

Conciliation, mediation, arbitration

Isabelle Schömann

Introduction

Dispute-resolution mechanisms are a core element of all industrial relations systems in Europe. In South Eastern Europe, both the industrial relations systems and the alternative dispute-resolution (ADR) procedures are relatively new and subject to amendment in the phase of transition to a market economy. Both trade unions and employers' associations are, however, aware of the importance of recourse to autonomous and voluntary mechanisms designed to improve and speed up the settlement of labour disputes. In this regard, a comparative overview of ADR mechanisms in Europe and in a selection of countries in South East Europe may assist the latter countries in their concern to better understand, adapt and implement such mechanisms in accordance with their own needs.

Labour-dispute prevention and resolution procedures are designed to help the parties involved in an employment relationship to arrive at a peaceful and voluntary solution to such disputes as may arise, without recourse to the courts and by means of settlements reached within the workplace, outside the traditional channels of the legal system. These dispute-settlement procedures are laid down, generally speaking, by the national legislation. Since one of the main aims of the settlement procedure is to encourage collective bargaining, there is a preference for bipartite forms of settlement wherever possible. Procedures may be of three kinds, namely, conciliation, mediation and arbitration; where the decision is taken by a classic court or *conseil de prud'hommes*, it becomes a judicial procedure. What these procedures have in common is the voluntary nature of the method, the parties being free to choose in favour of one arrangement or another. These practices, referred to as "alternative dispute resolution (ADR) mechanisms" may be applied to all forms of dispute. In some cases they deal with the enforcement or interpretation of an existing right, whether or not it is ratified by law, collective agreement or individual contract. (These so-called "conflicts of rights" are dealt with, at least in the majority of the 25 EU Member States, by the competent national labour jurisdiction, except in Cyprus, where the Ministry of Labour deals with both types of dispute.) Alternatively, they deal with conflicts of interest, generally arising in cases where collective bargaining has failed. Moreover, a labour dispute may be individual (involving a single worker) or collective (involving a group of workers).

Alternative dispute resolution mechanisms: a comparative overview

At international, European and national level in the European Union, ADR mechanisms have a significant role to play, as shown by the references detailed below. In civil matters, however, transnational labour-dispute resolution has little effective resonance, compared with other fields of civil law such as commercial and family law. It might be said that transnational labour dispute mechanisms are still under construction. National ADR systems in labour issues are, by contrast, up and running in the former EU 15 member states. The industrial relations systems of 9 of the 10 new EU member states, as well as some countries of South Eastern Europe, are in the process of adopting and /or devising such ADR in a period of transition to a market-oriented economy. A comparative overview of the ADR provisions and mechanisms in an enlarged Europe will help to clarify the challenges facing the social partners and the state, identifying bottlenecks and finding possible alternative solutions to national problems.

International overview of ADR

ILO recommendation n° 92 on voluntary conciliation and arbitration was adopted in 1951, at the same time as recommendation 91 on collective agreements. It sets out the main principles of conciliation and arbitration and, with regard to conciliation the ILO recommends the setting up of voluntary conciliation machinery to assist in the prevention and settlement of industrial disputes between employers and workers. Machinery set up on a joint basis should include equal representation of employers and workers. Moreover, the procedure, which should be free of charge and expeditious, should be able to be set in motion either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority, with the consent of the parties concerned. One of the aims being a non-judicial settlement of the dispute (whether via conciliation, mediation or arbitration), the parties are to be encouraged to abstain from strikes and lockouts while the procedure is in progress. No provision of the Recommendation may in any way limit the right to strike. Finally, when an agreement is achieved, it should be drawn up in writing and regarded as equivalent to a collective agreement.

Furthermore, **Recommendation 163** on collective bargaining, adopted in 1981, recommends that measures for the settlement of labour disputes be taken, if necessary, to assist the parties in seeking a solution to disputes, whether these arise during the negotiation of agreements, in connection with the interpretation and application of agreements or in relation (Recommendation 130) to an individual or collective instance of grievance in the workplace. According to this latter Recommendation, any worker, acting individually or collectively, should have the right to submit a grievance and have it examined without suffering any prejudice whatsoever as a result. The grounds for a grievance may be any measure or situation which concerns the relations between employer and worker or which affects or may affect the conditions of employment of one or several workers in the undertaking when that measure or situation appears contrary to provisions of an applicable collective agreement or of an individual contract of employment, to works rules, to laws or regulations or to the custom or usage of the occupational branch of economic activity or country.

In relation to convention No. 87 on the Freedom of Association and Protection of the Right to Organise (1948) and convention No. 98 on the Right to Organise and Collective Bargaining (1949), cases of the Freedom of Association Committee of the Governing body of the ILO on the restrictions on the principle of free and voluntary bargaining refer, on occasion, to the limits to recourse to compulsory arbitration. For instance, if the parties fail to reach an agreement through collective bargaining, recourse to compulsory arbitration is permissible only in the context of essential services in the strict sense of the term, meaning services of which the interruption would endanger the life, personal safety or health of the whole or part of the population (286th report, cases 1648, 1650). In non-essential services, priority should be given to collective bargaining as a means of regulating the employment conditions and not to compulsory arbitration (291st report, case 1680). Furthermore, provisions which establish that, failing agreement between the parties, the points at issue in collective bargaining must be settled by arbitration of the authority are not in conformity with the principle of voluntary negotiation contained in convention 98 (259th report, cases 1450). Additionally, any provision which permits either party unilaterally to request the intervention of the labour authority for settlement of the dispute may effectively undermine the right of workers to call a strike and does not promote voluntary collective bargaining (265th report, cases 1478, 1484).

The Council of Europe's **European social charter** of 1961, revised in 1996, is a solemn international text which all ratifying States are committed to observe. In May 2004, a total of 44 countries had signed the Charter (10 having signed the Charter of 1961 and 34 the revised Charter of 1996), while 34 had ratified it. Among the countries of SE Europe, Albania, Bulgaria, Croatia, Moldavia, Romania had both signed and ratified the Charter, while the Former Yugoslav Republic of Macedonia and Bosnia Herzegovina had signed it. The Charter lays down a set of human social and economic rights and freedoms and puts in place a system of controls to guarantee their respect by the signatory States.

According to the European Social Charter's Article 6 §3 on the the right to bargain collectively and "with a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for **voluntary negotiations** between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. **to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes**; and to recognise:
4. the right of workers and employers to collective action in cases of conflict of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Compliance with the undertakings set out in the Charter is subject to control by the European Committee of Social Rights, by means of two distinct procedures.

1) a control procedure on the basis of annual national reports drawn up by States. After examination of the report, the Committee publishes conclusions in which it decides on the conformity or otherwise of national situations with the Charter. If a State fails to follow up a decision of non-conformity by the Committee, the Committee of Ministers sends a recommendation to this state, requesting it to alter the situation *de iure* or *de facto*.

The work of the Committee of Ministers is prepared by a Governmental Committee composed of representatives of the Governments party to the Charter, assisted by observers representing the European social partners. This Committee examines the decisions of non-conformity in the months following their publication. The State concerned must be able to set out the measures it has taken or intends to take to remedy the situation and, in this latter case, must indicate the timetable for achieving conformity.

In cases where the Governmental Committee considers that appropriate steps are not underway to remedy a violation and follow up a non-conformity decision, it may propose to the Committee of Ministers that it address a recommendation to the State concerned. Such a recommendation requests the State to take appropriate measures to remedy the situation.

Every year, the Governmental Committee presents a report to the Committee of Ministers. Since 2002, it has presented a report on the revised Social Charter as well as its report on the 1961 Charter.

2) A collective complaints procedure which enables recognised organisations[1] to place before the European Committee of Social Rights claims concerning violation of the Charter.

Currently only 12 countries, which include Bulgaria and Croatia, have agreed to make use of the collective complaints procedure. In practice, the control mechanisms provided for by the Charter have resulted in a situation whereby States have adopted changes to the law or practice to bring situations into conformity with the Charter.

ADR in the European Union[2]

The European Council of the European Union has drawn up a Charter of fundamental rights of the European Union (OJEC C 364 of 18/12/2000 - OJEC C 007/8 of 11/01/2001) the purpose of which is to "establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens". The adoption of a Charter is above all a political message from the Fifteen to the citizens of Europe. The economic and social rights contained in the Charter are those contained in the Community Charter of social rights of workers, adopted in 1989, article 13 of which stated that, to facilitate settlement of labour disputes, it is important to encourage the introduction and use of mediation and arbitration, in line with national practices and at the appropriate levels .

However, the transnational dimension of disputes resolution mechanisms is an issue that arises for both international and European bodies. Significantly, while ADR procedures in the field of civil and commercial law are the subject of much interest and regulation, labour issues have until recently been noticeably absent from such initiatives. Only recently has the Permanent Court of Arbitration launched discussions on the adequacy and feasibility of an alternative mechanism for the resolution of labour disputes at the international level by creating or amending international rules to resolve international labour disputes.

At the European level, similar interests were developed in a first stage in the mid-1990s in the fields of consumer protection and family law. Since 2000, the European Commission has launched consultations and studies on the added value of a European system of ADR for collective labour disputes. As a complementary mechanism to national ADR systems, European mechanisms for non-judicial procedures could provide valuable support for the European social dialogue and, in the long term, support the development of a European industrial relations system.

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[1] The European Trade Union Confederation, UNICE and the International Organisation of Employers; non-governmental organisations (NGOs) with consultative status at the Council of Europe and registered on a list drawn up to this end by the Governmental Committee ; the employers and trade union organisations of the state in question ; and, for states which, in addition, accept this possibility, the national NGOs.

[2] Schömann, I. (2002) Alternative dispute resolution mechanisms in labour issues: towards an EU mechanism? ETUI TRANSFER 4/2002 pages 701-707.

The European Commission Justice and Home Affairs DG foresees, in its legislative work programme for 2004, a draft Directive on Alternative Dispute Resolution Methods on civil – but not on labour – issues, based on Community Treaty Art. 61(c) on co-decision, scheduled for September 2004. The aim of the draft directive will be to establish a regulatory instrument laying down minimum standards to ensure the quality of ADR processes, together with guaranteeing their consistency with judicial proceedings. The objective is to give all civil litigants access to reliable and effective Alternative Dispute Resolution schemes. The instrument will aim at striking the right balance between two objectives: ensuring the quality of ADR processes together with their consistency with judicial procedures, whilst maintaining their flexibility.

ADR in the EU member states: a well-established method of private justice in Europe

Alternative dispute-resolution procedures are widespread in the 25 EU Member States. In the old 15 member states and Cyprus, this is the result of the gradual assertion and consolidation of an industrial culture that favours concertation and cooperation over conflict. By contrast, ADR procedures are a more recent introduction into labour law in most of the new EU Member States, dating from the early 1990s in the cases of the Czech Republic, Estonia, Hungary, Poland, Slovakia and Slovenia and the early 2000s in Lithuania, Latvia and Malta.

The ultimate goal of ADR procedures is the attainment of industrial peace. In this respect, ADR stands in close relationship with the collective bargaining structure and coverage of a member state, but also with the trade union and employer association density and the workers' information and consultation rights that have to be seen as an ex ante dispute-resolution mechanism. If collective bargaining is the first and closest level of the institutional environment at which ADR procedures are developed and function, ADR procedures open up new conditions for dialogue and provide additional opportunities to reach an agreement when disputes arise concerning either the content of a rule or on its implementation. As such, ADR facilities strengthen social dialogue. Often established and regulated on bargaining-based instruments, ADR procedures are usually administered by bi- or tripartite bodies in which the social partners play a major role, as is the case in collective bargaining. In addition, where collective bargaining processes are encouraged, the social acceptance of mediation and conciliation as autonomous or voluntary solutions to industrial disputes increases, so that ADR could be seen as an extension of collective bargaining.

Alternative mechanisms for settling or resolving labour disputes, whether individual or collective, are a common and well-established feature of most labour relations systems in the member states. As a form of private justice, their roots lie both in the consensual industrial relations systems, such as those of the Nordic countries, and in the more institutionalised and court-based ones of, for example, France or Spain. The early development of alternative procedures complementary to judicial recourse within national industrial relations systems demonstrates a will to encourage, at least at a preliminary stage, a consensual approach to dealing with disputes. The perceived advantages of ADR procedures include the flexibility and rapidity of alternative procedures, the search for more appropriate solutions thanks to the professional backgrounds and experience of the third party involved in the mediation and consultation procedures, their independence and the reduced costs of ADR procedures in comparison to judicial ones.

Two models of judicial protection can be distinguished in relation to ADR procedures. ADR procedures can be defined as auxiliary techniques to be considered as part of the activities of the courts. In this case, ADR procedures are often assimilated to an alternative but in any case adversarial procedure. Alternatively, ADR procedures are defined as open-ended and autonomous scenarios that give the parties to the dispute a choice among several options. In this case, ADR is perceived more as a complementary procedure. Furthermore, the way in which judicial protection is organised can encourage recourse to ADR or act as a disincentive. Relevant factors are, for example, the existence – or otherwise – of separate judicial services for labour issues within jurisdictions, and the structure and composition of industrial tribunals or other courts having jurisdiction over industrial disputes.

The role of the third party to the procedure reflects the degree of consensus between the parties. It is the degree of intervention of the third party that distinguishes the three different *modi operandi*. According to the definition proposed by the European Commission, **conciliation** refers to a process where an independent third party assists the parties to a dispute in finding a solution. **Mediation** refers to the above-mentioned process whereby the third party plays a more active role in seeking solutions and suggesting them to the parties. However, in some EU Member States – such as Malta – no distinction is made between conciliation and mediation. If conciliation proves unsuccessful, the parties to the dispute may have recourse to arbitration. **Arbitration** differs from conciliation and mediation, in that it involves handing over to the third party responsibility for deciding the terms on which a dispute should be settled. Arbitration can be compulsory or voluntary. Conciliation and mediation procedures are common features of the European landscape, and are frequently used in the resolution of labour disputes. By contrast, arbitration plays a much more limited role in the resolution of disputes. Arbitration is generally voluntary and normally used as a last resort, after negotiation has failed to resolve a conflict. Arbitration is foreign to certain national systems (for example in Estonia) and the compromissory clauses, whereby the parties to an agreement agree to submit to arbitration any dispute that may arise between them, and thus before any dispute occurs, are prohibited in some systems.

Common characteristics of national ADR procedures in the EU member states

Although ADR procedures vary from one EU member state to another, they do have some shared characteristics. For example, the use of extra-judicial procedures for resolving labour disputes does not usually prevent the parties from having recourse to the courts.

In addition, in most of the ADR systems, mediation, conciliation and arbitration procedures are independent from each other, so that the parties to a labour conflict can initiate an arbitration process independently of the completion of a mediation and/or conciliation procedure. Though ADR procedures are more or less formalised, they are usually not standardised and therefore leave the parties significant latitude for self-regulation.

Furthermore, non-jurisdictional procedures can be optional or compulsory, depending on the nature of the dispute. In Sweden, for example, consultation is a prior compulsory procedure if there is a risk of industrial action.

The role of the third party in ADR procedures presents some interesting similarities. Whether conciliation, mediation and arbitration are conducted by an individual or by a collegiate bi- or tripartite body, or, as in France, by a special court composed of non-professional judges, this third party presents common characteristics such as independence and impartiality. The

parties to a labour dispute must be autonomous in their choice of third party. Furthermore, they must be entitled to challenge the third party in case of loss or lack of trust in their capacity to fulfill the role of mediator or conciliator.

Though a culture of arbitration is well established in the EU member states, the nature of the proposals drafted by mediators and conciliators nonetheless vary significantly from one state to another. Furthermore, the implementation of a mediation or conciliation decision or of an arbitration award is characterised by its territoriality (limitation to a single member state) and can encounter difficulties in cases of transnational labour disputes.

The binding effect of mediation and conciliation awards at national level can vary from a declaration of intent with moral authority to an effect equivalent to a collective agreement; in the case of arbitration, awards may be contested only before a judicial agency or court.

In most EU member states mediation proposals are usually not binding on the parties to a dispute. However, recommendations issued by mediators or conciliators – particularly in the case of a collegiate body – have a more developed moral authority, which is even stronger in cases where decisions are published. The parties to a labour dispute usually accept the proposal of the mediation or consultation body. In Denmark, for example, the workers' council has officially to accept or reject the decision.

During the mediation and conciliation phase, agreements can be reached and generally have the binding nature either of an agreement as defined in civil law or of a collective agreement as defined in collective labour law. The nature of the agreement can also depend on the private or administrative nature of the mediation and conciliation body that delivers opinions or decisions. In Austria, for example, the decision of the administrative conciliation agency is regarded as an official administrative act and not as an agreement. In any case, the parties should have the possibility to contest any mediation and conciliation decision at a higher instance. Furthermore, access to judicial procedure should be ensured at every stage of a mediation and conciliation procedure.

Limits of national ADR systems: the territoriality of ADR awards

The question arises as to whether a mediation or conciliation decision can be implemented beyond national boundaries. In most cases, the territoriality of mediation and conciliation procedures is a feature in EU member states. This cannot be criticised in itself but it does place an important limit on the recognition and implementation of mediation and consultation decisions in another member state in transnational labour conflicts.

ADR in South East Europe

Information contained in this chapter is taken from national reports prepared by members of the ETUI network for the Balkans: a Bulgarian report by Velitchka Mikova (KNSB) and a Romanian national report by Lucian Vasilescu (CNSLR Fratia). Additional information has been taken from ETUI report no 78[3].

[3] W. Düvel, I. Schömann., S. Clauwaert and G. Gradev (2003) *Labour relations in south east Europe – a legal overview in 2003*. ETUI report 78.

In labour legislation in south east Europe, the methods of peaceful settlement of collective labour disputes are: ***mediation***, as in **Bulgaria** and **Romania**; ***conciliation***, as in **Bosnia Herzegovina, Bulgaria, Croatia** and **Romania**; and ***arbitration***, as in **Bosnia Herzegovina, Bulgaria, Macedonia** and **Romania**. These different stages for the resolution of labour disputes are generally laid down by law, while recourse to them varies according to specific situations or in a specific order.

The **Romanian** labour law (1999) stipulates that conciliation and arbitration are compulsory and designed to assist in resolving labour disputes of a collective nature. The Ministry of Labour, Social Solidarity and the Family is the public conciliation and mediation body. The composition of the conciliation and arbitration body is tripartite. Within ten days of communication of the parties' grievances and claims, the Ministry delegate puts in place a compulsory mediation procedure. Should the conciliation fail – which, according to the national report, is frequently the case – an arbitration committee may be convened. This committee issues a ruling ten days after being convened. The ruling may not be revoked and eliminates all recourse to strike action. This latter feature hardly encourages the trade unions to resort to arbitration.

In Bulgaria a national body – the National Institute for Conciliation and Arbitration, under the responsibility of the Ministry of Labour and Social Affairs – was created in 1997 to supervise conciliation and arbitration. However, this body, which is based on tripartite representation, failed to operate as intended. In 2001 it underwent reorganisation and now deals with collective labour disputes. It has the status of a moral person attached to the labour ministry and consists of a supervisory council whose purpose is to ensure credibility and publication of lists of conciliators and arbitrators selected by the trade unions and the employers. Each party to a dispute may have recourse to this body in an effort to reach an out-of-court settlement, its purpose being, accordingly, to facilitate exchanges among the parties. Once a conciliator has been appointed, the parties have a fortnight (which may be extended at joint request) to seek either a solution to the dispute or recourse to arbitration in the event of disagreement, or, alternatively, to place their disagreement on record without recourse to any further form of mediation.

Arbitration is in principle voluntary, except in the case of maintaining a minimum public service during a strike when arbitration is imposed. Arbitration may be requested by one party to the dispute but requires an agreement in principle between the two parties on recourse to this procedure. The parties are required to accept the arbitration ruling but no sanction is imposed by law for failure to observe the ruling. The report mentions that, in such a case, workers may legally resort to strike as the ultimate means of pressure to attempt to solve the dispute between themselves and the employer (except in the energy, communications and health sectors). Bulgaria has received a demand from the ILO to amend its legislation. This relates to removal of the obligation to state the duration of strike and also to the granting of compensatory guarantees for sectors in which the right to strike is limited.

In both **Bosnia Herzegovina** and **Croatia** there exists a conciliation council – with members from the social partners and independent experts nominated from a list issued by the Labour Ministry (Bosnia Herzegovina), or the Social and Economic Council (Croatia) – which is responsible for peaceful settlement. Bosnia Herzegovina has the same structure for arbitration.

When, in **Macedonia**, the government body in charge of labour issues decides, in the course of the registration of general or branch agreements, that particular provisions of the collective agreement are not in compliance with the law or the general collective agreement, the signatories of the agreement are to be notified and the terms for conciliation laid down. Should the signatories of the collective agreement fail to eliminate the unresolved provisions within the set term, the government body takes legal action before the relevant court. In cases of disputes related to collective agreements, there exist special arbitration committees to resolve the questions at issue.

Recourse to alternative conflict resolution procedures is rare, according to most of the reports: it is difficult for the parties to agree on a mediator, and in the case of arbitration the parties do not trust the arbitration commission (**Romania**). In **Croatia**, the list of conciliators was neither verified nor published. Lack of a tradition of recourse to voluntary solutions in case of labour disputes can also explain the reluctance to use alternative procedures (**Bulgaria**). The lack of an opportunity for appeal is an additional disincentive which explains the neglect of arbitration in **Bosnia Herzegovina**. In the **Kosovo** report, no mention is to be found of mediation, conciliation or arbitration, but the parties to a collective dispute may seek a solution before the labour inspectorate.

In **Albania**, no ADR mechanism is currently foreseen in the labour code. However, trade unions hope to engage in tripartite negotiations to launch such voluntary dispute settlement systems. National information focused on the need to train all parties engaged in mediation, conciliation and arbitration issues, as well as the professional judges on national labour legislation, and particularly on social dialogue methods and procedures as well as on international and European provisions on ADR and labour courts. Here again the need for procedural information and transparency of the ADR system, and the need for judicial independence of conciliation and mediation bodies, are strongly expressed.

Conclusions

Non-judicial dispute resolution is a central feature of the industrial labour relations environment in Europe. ADR mechanisms are embedded in the social and legal culture of each member state and have developed over long periods of time. These alternative and functioning systems of labour-dispute-resolution procedures are of a distinct and particular nature as regards their structure and organisation and the binding or non-binding effect of the outcome. But the most important feature of ADR is the willingness of the parties to use alternative consensual mechanisms. The social acceptance of ADR is the result of the progressive assertion and consolidation of an industrial culture based on social dialogue.

South Eastern European countries, by contrast, make only restricted use of ADR, either because the law lays down a conciliation and/or arbitration system characterised by lack of transparency and efficiency, or because the collective bargaining systems still in the making do not dare resort to a voluntary system of collective dispute resolution based on mutual trust between parties and respect of procedures and rulings. A genuine problem is raised by the compulsory character of certain conciliation and/or arbitration procedures which restrict and even remove the right to strike. Finally, in most of the South Eastern European countries, the State plays an overwhelming role in the settlement of collective labour conflicts, even though conciliation and mediation are intended to enable the two sides to seek a solution in a more independent manner.

Comparative overview on conciliation, mediation, arbitration

Tables

1.) Austria

Method	Mediation
Body	**Federal Arbitration Board**
Within	Federal Ministry of Labour and Social Affairs
Composition	Employers + employees
Subject	New collective agreements + amendments
Task	Mediate + encourage settlement
Effect	In writing – like a collective agreement
	Awards are conditional on prior acceptance
Body	**Mediation Boards**
Within	The labour courts
Subject	Adoption of internal company regulations
Task	Mediation + encourage settlement + can hand-out decisions

2.) Belgium

Method	Conciliation
Body	**Joint Labour-Management Commission**
Subject	Preventing or conciliating all disputes between employers and workers
Members	Trade union members + employers members
Body	**Government conciliators**
Appointment	11 members appointed by the Crown
Aim	• To endeavour to prevent labour disputes and to keep abreast of the outbreak, development and conclusion of such disputes • To carry on all negotiations to reconcile the parties • To remain in permanent contact with the labour unions and the employer's associations

3.) Czech Republic

Method	Mediation – voluntary
Body	**Mediator**
Subject	Collective disputes on the conclusion of collective agreements and on the fulfilment of the obligations of a collective agreement
Members	A person from the list of mediators kept by the Ministry of Labour and Social Affairs or a person on whom the parties decide, which meets certain criteria
Aim	Issues a written proposal on the basis of discussions with the contracting parties
Method	Arbitration
Body	**Arbitrator**
	List of arbitrator kept with the same Ministry
Aim	Issues a decision

4.) Denmark

Method	Conciliation
Body	**Conciliation Board**
Members	3 representatives of DA and LO
Appointment	By the Ministry of employment for three years on the recommendation of the labour court
Aim	• To promote cooperation between management and employees and to assist in the creation and operation of cooperation committees • To settle disputes arising from the application or interpretation of collective agreements
Request	Either one of the parties or once the dispute is judged of national importance

5.) Estonia

Method	Conciliation
Body	**Labour Dispute Commission** (in 15 counties)
Members	Chair (employee of the local labour inspectorate) + equal number of representatives of employees + employers
Body	**Public/Local conciliator**
Aim	To solve collective labour disputes

6.) Finland

Method	Mediation + Conciliation + Arbitration
Voluntary/mandatory	• Strike can only be initiated when national conciliator has been notified in writing two weeks before • Arbitration if provided for by collective agreements
Body	**National mediator**
Aim	Devise a compromise May draft a settlement
Body	**Arbitration tribunals**
Voluntary/mandatory	by agreement of the parties
Members	Three people – one nominated by each party + a chairperson, chosen by the other two
Legal status	Awards are final + legally binding

7.) France

Method	Many industry-level collective agreements provide for a permanent conciliation committee

8.) Germany

Method	Conciliation as laid down in the collective agreements between the social partners

9.) Greece

Method	Mediation + arbitration
Voluntary/compulsory	
Body	**Mediation**
Aim	When negotiations have failed
Appointment	
Selection	Parties are free to choose the mediator, if not chosen from the list drawn up ev Labour dispute settlement in South East Europe ery three years by the mediation + arbitration service
Procedure	20 days to reach an agreement, when failure, the mediator submits his proposal, if rejected, than arbitration
Legal effect	Signed proposal has the status of a collective agreement
Body	**Arbitration** if: • By common agreement between the two parties in the course of the collective bargaining • At the initiative of one of the parties, provided the other party has rejected mediation • At the initiative of the trade union organisation accepting the mediator's proposal rejected by the employers' side
Voluntary/compulsory	If one party asks for arbitration, then obligatory
Appointment	Special list of arbitrators
Selection	By common agreement of the parties, if not drawn at random
Procedure	Decision within 10 days following mediation
Legal effect	Collective agreement

10.) Hungary

Method	Mediation
Body	**Labour mediation and arbitration service (**MKDSZ) (1996)
Voluntary/compulsory	Upon the joint request of the parties
Appointment	provides a list of trained mediators and arbitrators – official register
Selection	Candidates must fulfil certain conditions: country's nationality, university degree, five year of experience in the field of industrial relations and good communication skills
Procedure	Eight days to reach an agreement, may be extended up to another five days – the remuneration paid to the mediator decreases every two days – incentive to quick conciliation
Aim	to facilitate reaching an agreement in collective labour disputes
Appointment	5 years
Costs	Mediation free of charge – arbitrators paid by the employer
Statistics	2000: 19 requests – 6 mediation – 2 arbitration

11.) Italy

Method	Conciliation provided for in most national collective agreements Public conciliation and mediation to settle disputes of right and interest

12.) Latvia

Method	Conciliation – voluntary
Body	**Conciliation Commission**
Members	Representatives of the parties
Subject	Collective rights and interest disputes
Legal effect	Binding on the parties – validity of a collective agreement
Method	Mediation – voluntary
Body	**Mediator**
Members	One person or a board, to be chosen by the parties
Subject	Collective interest dispute
Legal effect	In writing – validity of a collective agreement
Method	Arbitration
Body	**Arbitration court**

13.) Lithuania

Method	Conciliation
Body	**Conciliation Commission**
Members	Equal number of representatives of the parties – maximum 5 persons of each side
Procedure	Within seven days
Legal effect	Binding on the parties
Method	Mediation
	A new resolution procedure due to the parties to choose a mediator
Method	Arbitration
Body	**Labour Arbitration**

14.) Luxembourg

Method	Conciliation (obligatory) and Mediation + Arbitration (voluntary)
Legal status	If accepted: status of a collective agreement

15.) Malta

Method	Conciliation/mediation (no distinction made)
Body	**Conciliation panel**
Members	Not less than five persons
Aim	Endeavour to bring about an amicable settlement Make any necessary recommendations for a resolution

16.) Poland

Method	Conciliation
Voluntary/mandatory	When initiated by the trade unions, the employer cannot refuse to participate
Legal effect	Binding on both parties – if no agreement: obligation to go on to mediation
Method	Mediation – mandatory
Body	**Mediator** – trustworthy + neutral
Appointment	Selected from a list by the Ministry of labour and Social Policy drawn up by the Ministry in agreement with the most representative social partner confederations
Selection	By agreement, if not the Ministry chooses from the list
Procedure	Cannot exceed 14 days
Enforcement	None
Method	Arbitration – voluntary
Body	**Arbitration board**
Members	Chairperson (professional judge) + 6 members (3 of each side of industry)
Legal effect	Binding on both parties

17.) Portugal

Method	Mediation + conciliation
Body	**Mediation**
Selection	Parties choose the mediator
Body	Conciliation initiated by either or both parties or by the Ministry of labour

18.) Slovakia

Method	Mediation + arbitration
Voluntary/ obligatory	Voluntary
Body	**Mediation**
Appointment	Any adult citizen if included on an official list
Selection	Jointly by the parties, only after 60 days since the proposal to conclude a new collective agreement If not chosen from a list by the Ministry of Labour, Social Affairs and Family
Decision	Written proposal within 15 days – deemed to have failed if no solution within 30 days
Legal effect	
Enforcement	
Costs	Shared by the parties
Body	**Arbitration** (if mediation failed)
Appointment	Any adult citizen if included on an official list
Selection	Only by the Ministry from the list at the request of one party, not the same person as the mediator
Decision	Within 15 days
Costs	By the Ministry
Legal effect	Appeal to the civil courts within 15 days

19.) Slovenia

Method	Conciliation + Arbitration Regulated solely by collective agreements

20.) Spain

Method	Conciliation + Mediation
Voluntary/ obligatory	Mandatory part of the collective agreement
Body	Joint Collective Agreement Committee set up by the social partners
Appointment	
Selection	
Legal effect	Status of a collective agreement
Enforcement	

21.) Sweden

Method	Conciliation (no distinction is made in the law between conciliation and mediation)
Voluntary/mandatory	Parties are obliged to attend the meeting of conciliation
Body	**State conciliation institute**
Appointment	Conciliator by the institute
Selection	at the request of one or both parties

22.) United Kingdom

Method	Conciliation + Arbitration
Body	**ACAS** (Advisory, Conciliation and Arbitration Service)
Selection	At the request of one party

Part II

Labour court systems in the European Union and in South East Europe

A comparative overview

Wiebke Düvel

Introduction

Labour dispute settlement can be achieved, as illustrated in Part I, by non-judicial means. But this does not mean that ADR can replace the traditional means of solving disputes in court. For example, ADR does not always allow for review of the agreement reached. Furthermore, enforcement of the agreement, should one party fail to abide by it, is often problematic. Therefore the two modes of labour dispute settlement – non-judicial and judicial – should always be regarded as complementary, each contributing their specific advantages to the national industrial relations system.

Part II of this report will look at the judicial approach to labour dispute settlement. It provides a comparative overview of the labour court systems in the European Union and South East Europe. The comparative approach was chosen in order to demonstrate the large variety of existing systems. This makes it clear that each national system of industrial relations has found a corresponding mode of dispute settlement.

The labour court systems of 16 EU Member States are analysed – focusing on the main comparable principles such as structure, procedure, etc.

Information is provided on recent developments regarding labour courts in South East Europe: Bulgaria, Romania and the countries of former Yugoslavia. I would like to thank trade union colleagues Velitchka Mikova (KNSB - Bulgaria), Lucian Vasilescu (CNSLR – Fratia - Romania), Vesna Cejovic (SSSCG - Montenegro) and Suncica Benovic (UATUC - Croatia) for the valuable information provided on the situation in their respective countries.

More detailed contributions are given on specific national systems (Germany, Hungary, and Switzerland). The idea is to describe a certain number of national systems in greater depth. However, the selection of these particular countries is in no way intended to suggest that they represent a better example for the region than other national systems.

Tables on the 16 EU countries are included at the end of Part II; these are intended to enable the reader to gain a rapid comparable overview of the differences and similarities in the different countries. For further detailed information the sources cited in the bibliography may be referred to.

Labour courts in the European Union – a comparative overview

When we speak of labour courts we refer to courts that are specialised in the resolution of labour disputes, in contrast to general civil courts. These courts represent one means of helping to close the gap between rights granted to workers by the legislation and their implementation in practice. Labour courts can help to make these rights effective, because – apart from trade unions – labour courts are the only forum to which the majority of workers can turn in order to implement their rights.

The following contribution analyses the different labour court systems throughout the European Union, examining certain of their features, which can be compared, such as structure, composition and procedures. In making such comparisons, however, it has of course always to be borne in mind that the labour courts are organised and work differently in each of the countries, given that the labour court system is invariably adapted to fit into the industrial relations system of each country. Therefore the comparison can show only the main lines of the systems.

Starting the comparison with the **judicial system**, it can be said that labour courts are either integrated into the civil court system (as in Austria, Belgium, Italy, Portugal and Spain) or separated from it (as in Denmark, Finland, France, Germany and the UK). In other words, the labour courts can be part of the civil jurisdiction, as labour courts as such, or as specialised chambers; alternatively, labour courts may form a special jurisdiction following specific rules. Only one of the countries analysed, namely The Netherlands, has no form of labour court at all.

Regarding the **composition** of the courts, it is found that the majority of countries have lay judges in their labour courts. The term lay judge is used to distinguish these judges from the professional judges with a legal background. Lay judges are in general persons coming from the workplaces (representing trade unions and employer organisations) and who therefore have first-hand knowledge of the day-to-day life and the problems which might occur in practice. Lay judges are included in the labour courts to bring to the labour judgements their knowledge and experience of the labour market and workplace problems and their special understanding of social issues. It may accordingly be observed that under a system with lay judges the parties have more trust in the system and the judgements pronounced are more often perceived as fair.

In many countries the lay judges represent the trade unions and the employer organisations, but this is not necessarily the case, as is shown by the examples of Hungary, where 90% of the lay judges are pensioners, and of the UK, where lay judges are now appointed by open competition. Another interesting example is Luxembourg, where the lay judges are chosen, depending on the case, from either white-collar or blue-collar workers.

In the first instance a tripartite system of professional judges and lay judges from the trade unions and the employer organisations can be found in Austria, Belgium, Denmark, Finland, Germany, Luxembourg, Slovenia and Sweden. In Greece, Italy, the Netherlands, Portugal and Spain, on the other hand, professional judges only are appointed. France is the one country in which cases are judged by representatives of both sides of industry alone. Furthermore, France is the only country in which workers and employers have the right to elect the lay judges. In other countries they are nominated by an administrative body directly or upon

nomination by the trade unions and employer organisations. In Slovenia they are appointed by the national assembly.

From one country to another the number of judges (professional and lay) is uneven. In most countries in the first instance there are three judges (or five or seven), composed of one professional judge and two lay judges, and only in Finland and France does one find four lay judges. It is specific to the Slovenian system that the number of judges changes from three in individual disputes to five in collective disputes.

Another relevant aspect is the **training of the lay judges**, their task being to administer justice in the absence of a legal background. Yet this invariably emerges as quite a weak field, no doubt because what lay judges are supposed to bring into the courts is their practical knowledge rather than knowledge of the legal and procedural details. Training is provided by the organisations which appointed their members in Austria, France and Germany. No training at all is given to lay judges in Belgium, Denmark and Sweden.

The question of **impartiality of the lay judges** is often raised in this context. However, nearly all countries reported that experience showed that judges usually vote unanimously. This would seem to be evidence of impartiality, showing that judges do not simply vote for their own side.

As for the relationship between professional judges and lay judges, it is interesting to see that most professional judges perceive the lay judges as an asset to their system.

The **competence** of the labour courts is different throughout the EU member states. A division can be drawn in relation to the different categories of dispute that may be brought before the specialised jurisdiction. Labour courts handle individual labour disputes only in Belgium, France, Italy, Luxembourg and the UK. In Denmark and Finland the opposite is the case – only collective labour disputes fall under the jurisdiction of the labour courts. Both forms of dispute may be brought before the labour courts in Austria, Germany, Greece, Portugal, Slovenia, Spain and Sweden. Labour courts in Belgium, Italy, Slovenia and Spain also judge disputes concerning social security matters.

A crucial point in relation to the operation of labour courts is the **procedural rules** they follow. Advantages of labour courts should be that the proceedings are quick, simple, effective and less costly than normal court proceedings.

Simple proceedings are those which allow a person who has no legal knowledge to use the courts without the assistance of a professional lawyer. This starts with the question of how to lodge a complaint. In the UK a simple form – available from a variety of sources, such as the courts or via the internet – has to be filled in to start the court procedure. In Germany people can turn to the court clerk to lodge a complaint, should they not feel comfortable doing it on their own, for fear of making a mistake or if they cannot read or write.

The procedural system is mostly adversarial rather than investigative, due to the wish to give extensive control over the course of the proceedings to the parties to the dispute themselves.

The procedural rules in the labour courts are frequently more informal than in the civil courts, due to the idea, mentioned above, that workers should not be obliged by external factors to hire a lawyer should they not belong to a trade union and therefore not represented by one. Either these changes are made via exceptions from the civil procedure for labour disputes, or else countries have a special procedure for the labour courts, as is the case in Belgium, France, Portugal and Germany. However, even though the rules are more informal, a trend towards an increasing role of lawyers is to be observed in the countries analysed.

Another important subject upon which to reflect is that of **accessibility** to the courts. The geographical distribution of courts is of course linked to the question of public transport and to that of how justice can be made most easily accessible to the people.

The general courts might supply the necessary premises and might already have a good geographical distribution throughout the country. Finland is a contrasting example - only one labour court exists for the whole country, though it should be borne in mind that only collective disputes are dealt with before this labour court. Therefore it is not the isolated individual worker who will have to travel to attend a court hearing.

One example – characteristic of the UK in the past – is that there existed only a few stable premises and the judges moved around the country to wherever a case had to be solved. In Germany court days are held once a week in areas where no labour court is normally based in order to supply also the more rural areas.

Prior peaceful settlement of the case, in various forms, is an important aspect of labour disputes, and not only from the standpoint of time and costs. If the parties agree on a settlement, this avoids a long court procedure, probably over several instances, and thereby naturally shortens the proceedings considerably. Furthermore, in some countries there are incentives or rewards for peaceful settlement of a case, in the form, for example, of lower court fees.

Most countries have some form of provision for peaceful settlement: either it is a mandatory requirement to start court proceedings (Denmark, Finland, Ireland, Italy, Spain and Sweden), with peaceful settlement being able to be used within the court procedure – before the actual hearing – as a first conciliatory stage (Belgium, Denmark, France, Germany, Slovenia, Spain and Sweden) or as a method throughout the procedure (Denmark, Germany, Italy, Sweden and the United Kingdom). The Netherlands is merely at a stage of experimenting with peaceful settlement in the courts.

Indeed, in labour law disputes a peaceful settlement is surely always to be preferred to a court judgement in order to avoid the perception of having a “winner” and a “loser”, since the parties to a dispute frequently have ongoing relationships and must continue to work together and in close proximity after termination of the dispute.

Representation is an important factor in access to the courts. Many workers might feel uncomfortable going to court without being represented, even if this is possible under most procedural rules in the EU Member States. However, workers often fear the financial burden of employing a lawyer for representation in the courts. Therefore the representation of workers is an important service provided by trade unions to their members. In most countries trade unions are allowed to represent and assist their members in the labour courts. Only in Finland are trade unions not allowed to represent their members, while in Portugal representation is possible only

in special cases. Of course in each country trade unions are free to stipulate their conditions for defending the workers, such as the condition of membership for example.

An essential factor is the **duration** of a court case. Dismissed workers hoping for reinstatement, or workers claiming their wages, cannot wait years for a judgement that will state their rights that they can then enforce. But even for ongoing relationships it is important to have a quick decision; in collective labour disputes this might help to avoid a strike or to shorten it.

Here the possibility of using several instances might be problematic, but concrete timeframes for lodging a complaint, and for periods to be respected by the judges and the parties, are helpful. Furthermore, most countries have provision for an "urgency procedure" in cases where the parties would lose out on their rights if they had to wait for a normal court proceeding to be terminated (Finland, France, Germany, Italy, Luxembourg and the Netherlands).

It is instructive to compare the volume of cases in different countries and the average time period needed to solve them.

Country	**First instance**	**Appeal**	**Average time period**
Demark	724	----------	86 days – in default 194 days – decision 1 year – judgment
Finland	135	11	4-5 months
France	160,000	55,000	75 % > 1 year
Germany	600,000	22,000	2%> 1 year (dismissal) 4%> 1 year (others)
Italy	**1,012367**	126,772	**> 1 year**
Slovenia	7,042	2,708	**69,2%>1 year** (2001)
Sweden	400	40%	10% > 1 year
UK	98,617	1-938	17 % > 1 year

Data from 2002 – Sources: http://www.oikeus.fi/tyotuomioistuin/2026.htm; http://www.ilo.org/public/english/dialogue/ifpdial/ll/lc.htm

As can be seen, the volume of cases varies considerably between the different countries.

Several aspects might explain these figures: that the Nordic countries are the ones with the smallest amount of cases might be explained by the fact that only collective disputes are brought before the courts, but this explanation is valid only for Denmark and Finland. And what about Sweden?

The volume of cases may also be set in relation to the workforce in the countries concerned. In Germany around 30,000,000 people are economically active for 600,000 cases in 2002, while Italy has a workforce of just 21 million but over one million cases in the same year. So the explanation is not to be found in the number of people in an employment relationship.

Nor can a relation between prior peaceful settlement before the court proceedings and the number of cases serve as an explanation, since this is mandatory in Italy, which is still the country with the highest number of cases. This question is much more complex and many aspects of the legal system have to be taken into consideration, such as fees for lawyers and the courts, the effectiveness of prior peaceful settlement, and probably also people's willingness to use the alternative channel for the settlement of disputes.

By contrast, a correlation does exist between the volume of cases and the average time taken for the settlement of disputes, with Germany on the minimum and Slovenia on the maximum of the scale.

The **costs,** including court fees, lawyers' fees, expert fees, etc., might represent a major obstacle to people defending their rights. That is why, in many countries, ways have been found of making an institution as important as labour courts more financially accessible to the public at large. The different formulae used are: lower court fees (Denmark, Finland, Germany, Greece, Slovenia and Portugal), no court fees (UK, Spain, France and Hungary (for the workers)), no fees when out-of-court agreement is reached (Germany), no costs imposed upon the losing party to cover the successful parties lawyers' fees (Denmark, Germany), free legal assistance, union representation and financial aid for people with low income (Finland, Germany and Hungary).

Except for the Nordic countries (Denmark, Finland and Sweden) the possibility of **appeal** exists in all countries. Lay judges are to be found in all instances in Austria and Germany, in the first and second instance in Belgium, and in the first instance only in France, Hungary, Slovenia and the UK.

After the court procedure the question of **enforcement** of the decisions has to be raised. Four cases can be distinguished, namely, immediate enforcement (as in Finland, France, Italy and Luxembourg (on judgements regarding pay)); enforcement after a time limit of two weeks, in Denmark; decisions are provisionally enforceable (Austria, Belgium by the judge, in Germany automatically by law); or enforcement is suspended by appeal (Belgium and UK).

When preparing the new establishment of labour courts it is important to reflect upon the question of what happens if **labour courts** are **highly used**, which is of course quite possible due to high numbers of dismissals, unpaid wages and collective disputes. But this question is also of importance for countries in which labour courts are already highly used.

Of course it is essential that labour courts have enough staff to cope with all cases brought before them, for otherwise the advantage of the speedy procedure will be lost. The procedure has to be efficient and maximum use must be made of the judge's time (e.g. oral judgements and use of the internet). The judges must be qualified and good, which will be achieved through training. Pre-trial procedures to solve cases at an early stage might help to decrease the problem, if court proceedings are perceived as a last-minute attempt to reconcile the parties.

The **role of the labour court** is closely linked to the industrial relations system of a country, but four general points can nevertheless be found. Of course the role is to solve a particular case brought before the court, induce parties to return to negotiations and help to find a compromise; but the courts also have a policy-making function by determining a reasonable balance of power, and a law-making function.

The policy-making function refers to the fact that labour courts have to implement social policy and, by doing so, they develop it by giving their interpretation. Labour courts are obviously an important means of implementing fundamental labour standards and are thus a part of a social-policy-making system consisting of mainly governmental bodies acting for this purpose. Therefore it is important that the judges give clear and transparent decisions concerning social policy.

By developing and actualising workers' rights labour courts influence labour law. The link between the jurisprudence and the legislation is often obvious when the legislation is changed after a certain court decision. But this also applies in cases where a labour court has to solve a case brought before it and no legal provisions are to be found to solve the case. Then the court cannot leave the parties without an answer, but has to create one itself by interpreting the law, always bearing in mind the principles given by legislation, case law and the doctrine. These situations often occur due to the rapidly changing labour market. This leads to interaction between labour courts and the legislation and the legislator. In many countries courts have developed rules governing strikes and lock-outs and workers' right to join, or not to join, a trade union.

For the countries which have just joined the European Union, or for those which will join in the future, the **relation between national courts and EU law** is of interest, especially the possibility to use EU law before the national courts and the possibility to bring a case before the ECJ.

The preliminary ruling procedure before the ECJ, when a national court puts questions to the ECJ, might be of interest to trade unions. The representation of the parties before the ECJ is the same as in the initial proceeding on national level, which means that trade unions representing a party in the initial court case before the national court can than plead before the ECJ. This gives the trade unions the opportunity to give directly to the ECJ their opinion on the case and the main questions behind the actual procedure.
Moreover, the case law of the ECJ in the social field can serve as a point of reference when building up a new jurisdiction without the tradition of specialised labour courts.

In short, labour courts corresponding to the specific national system of industrial relations have many advantages, the most important being that they give the workers a means to enforce their rights as provided by legislation. Further advantages may be summarised as follows: labour courts offer quicker proceedings; the judges offer the special knowledge in the social fields which judges in civil matters will not and cannot have; lay judges bring the knowledge of the labour market in the courts and increase the acceptance of the decisions taken; the lodging of a complaint and the trial procedure can be simplified; trade unions can represent their members and in general the procedure will be less costly.

Some national examples

Germany
Hungary
Switzerland
South East Europe

Settlement of labour disputes in Germany

This contribution looks at three different levels of labour-dispute settlement under the German system. In Germany, labour-dispute settlement takes place mainly in the labour courts, as the jurisdiction comprises individual and collective disputes. Secondly, the social partners have the autonomy to bring settlements on collective agreements before a conciliation board, insofar as the collective agreement contains the requisite provision. Last but not least, a special settlement procedure – known in German as the "*Einigungsstelle*" – is foreseen in the law for disputes on works council matters.

Dispute settlement as contained within collectively agreed provisions

The social partners may stipulate in their collective agreement a procedure for the settlement of disputes between themselves, the main purpose of such a provision being to promote agreement and prevent strikes and lock-outs. As the details of the procedure are laid down within the collective agreement itself, it differs from industry to industry, and this article can therefore explain no more than the main features. Dispute settlement might be required on an ad hoc basis in relation to an isolated dispute, in relation to the termination of a collective agreement and the negotiation of a new one, or for all disputes arising in relation with a collective agreement.

A principle characteristic of the German collective bargaining system is the peace obligation. In other words, industrial action on any subject regulated by the collective agreement is prohibited until expiry of the collective agreement. Under some agreements this peace obligation period is even extended to the period of the dispute settlement.

The conciliation boards are generally composed of conciliators from both sides of the social partners and a chair either from among themselves or from a third party. The social partners have to agree on the chairperson; otherwise, s/he will be appointed by lot or by a third party.

No detailed procedural rules are to be found in the collective agreements. Dispute settlement may be initiated by one party or jointly. None of the board meetings are public. During the meeting the parties are heard and the documents submitted are evaluated. The board is expected to encourage the parties to reach an agreement instead of presenting a proposal. The parties have the right to invite experts if they feel the need to do so. The costs of the procedure are shared by the parties.

If both sides agree – either before or after the conclusion of an agreement – on its legally binding nature, the agreement reached in the dispute settlement procedure has the legal effect of a new collective agreement.

Settlement of disputes relating to works council matters – "*Einigungsstelle*"

The "*Einigungsstelle*" arrangement offers a possibility of dispute settlement inside the enterprise for disputes occurring between the employer and the works council. It is a way out of disputes on enterprise level, given that the works councils do not have the right to strike, due to a peace obligation laid down by law. The procedure before the "*Einigungsstelle*" is designed to compensate for this lack of collective action.

As the "*Einigungsstelle*" is appointed on an ad hoc basis in order to settle a precise problem between the parties, three questions always have to be answered beforehand. What is the matter requiring settlement? How many persons are to participate in the board on each side? And who will chair the board?

The first question is of course linked to the competence of the "*Einigungsstelle*". It is competent for disputes on the company level, e.g. in respect of co-determination on social matters and in respect of restructuring plans.

The first and second questions concern the composition of the board. The law states only that the number of participants from the works council and employer side must be the same and that an impartial chair must be appointed. Therefore the parties are free to choose the number and the persons, who may come from inside or outside the workplace. The number of participants depends on the difficulty of the case and is in general two or three. If the parties cannot reach an agreement on the number, the decision will be taken by the labour court. The main problem in practice is appointment of the chair. Again the labour court will decide, should the parties fail to reach an agreement. In most cases the appointed chair is a labour law judge.

The role of the chair is comparable to a mediator; s/he needs to have an understanding of the situation/conflict and must be ready to lead the parties to an agreement. The law does not give details on the procedure.

The parties may agree on a solution; otherwise, the board will present a decision. This decision is taken by the majority of votes, but in two steps. In the first round the chair does not have the right to vote; only if there is no majority, may the chair vote in the second round. The decisions have to be set down in writing, and signed by the chair. They must be sent to the employer and the works council without delay. The agreement reached has the same legal status as a collective agreement on enterprise level. As such, it is legally binding.

The employer is required to implement the decision. In the event of failure to do so, the works council can demand its implementation through labour court proceedings.

The employer pays the costs of this procedure. Those members of the board who are employees of the enterprise receive their usual salary; any members not employed in the enterprise, and the chair, are paid for their work on the basis of a contractual agreement.

The decision can be brought before the labour court for review on the grounds that the interest of one of the parties has not received appropriate consideration. Any such review has to be requested within two weeks of notification of the decision by the chair.

Dispute settlement before the labour courts

Labour courts are a separate jurisdiction in Germany, which is highly used. In the year 2002, in Germany as a whole, a total of 625,323 complaints were lodged, 91.7 % of which came from the employee side. The largest number of cases concerned the existence or non-existence of an employment relationship and dismissal (41.5 %), while 28.5 % concerned remuneration. 73.9 % of the cases were settled within the year 2002, 45 % by settlement and only 6.6 % by judgement.

In the same year Germany had 1,154 professional judges in 122 labour courts and 19 appeal courts.

As for the timeframe for the settlement of a dispute in 2002, 23% of the cases concerning disputes over the existence or non-existence of employment relationships took less than one month, as did 20% of the other disputes. 43 % of the cases were able to be settled in one to three months and only 1.9 % of the cases on the existence or non-existence of employment relationships took longer than a year (4% for other disputes).

Germany has an act on the procedure before the labour courts which specifies some specific procedural rules. Where no specificities are laid down, it makes reference to the civil procedure act. It should be mentioned, however, that there is discussion at the political level in Germany of integrating the labour courts into the general civil court system, for economic reasons and in order to make financial savings. This would not mean the abolition of specialised labour courts, but their integration into the civil jurisdiction. This project is very much opposed and criticised by the experts in the field.

Labour courts in Germany in all three instances operate with two lay judges and professional judges (one in first and second and three in the third instance).

The lay judges are appointed by the responsible government authority chosen from lists put forward by the trade unions and the employer associations.

Only two conditions have to be fulfilled to be able to exercise as a lay judge: the candidate must be at least 25 years of age and active in the district of the labour court.

Under the German labour court procedural act, two proceedings are foreseen, the most frequent one being the proceeding leading to a judgment "*Urteilsverfahren*"; the second is the proceeding leading to a ruling "*Beschlussverfahren*", which is mainly used in relation to litigation on the ground of the acts on works councils "*Betriebsverfassungsgesetz*". The first proceeding, the "*Urteilsverfahren*" is used, among other things, for litigation on the grounds of the employment relationship, litigation between parties to a collective agreement, the existence or non-existence of collective agreements and questions regarding collective action and the freedom of association in respect of unlawful acts.

The trial always starts with a conciliatory hearing between the professional judge and the parties in an effort to reach a peaceful settlement between the parties. If they are successful, no court fees are due. If no settlement is found, the case goes into the litigant hearing with all three judges. This hearing is prepared in such a manner that only one hearing is necessary. The judgment is to be pronounced immediately after the hearing.

Cases on dismissal always have priority over other cases and the conciliation procedure must take place within two weeks after the institution of the proceedings.

Trade unions and employer organisations can represent their members before the labour courts, but only in first instance.

Contrary to the civil court procedure, no advance on costs is charged in the labour courts. Court fees in first instance may be between 10 and 500 Euros depending on the dispute value. Each party pays its own costs in the first instance, such as lawyers' fees, travel expenses, etc.

Legal aid can be accorded by the judge to a party, if the personal and economic circumstances of the person are not sufficient and if the case has a good prospect of success. Another possibility is the assignment of a lawyer to a party at the party's request if the adverse party is represented by a lawyer, if the party is not in the position to pay the costs. Than the lawyer is paid by the state, but the court fees are still the responsibility of the party.

Judgements are enforceable provisionally by law even if appeal and review are still possible. Exemption from this requirement may be granted if the defendant satisfactorily shows that enforcement would create a disadvantage for which it would be subsequently impossible to compensate. Final enforcement is possible along the lines of the civil procedure.

Appeals have to be brought before the appeal courts, and reviews to the federal labour court; the latter judges on law alone, while the first and second instance judge on fact and law.

Settlement of labour disputes in Hungary

Judit Iványi Czugler

Figures

Labour-law disputes in Hungary are initiated typically (in about 85% of cases) after termination of the employment relationship, irrespective of the substance of the case, according to a study published in 2000[1]. Other significant figures presented in the study include the fact that dispute procedures were initiated mainly by employees (97.3%, including a significantly higher proportion of white-collar than blue-collar workers). Procedures lasted less than six months in 67% of cases, 7–12 months in 26.8%, 13–18 months in 6% and over 18 months in 1% of cases.

The survey showed that blue-collar workers were represented by lawyers in 50% of cases, in contrast to 68% in the cases of managers and other professionals or employees with a higher education. Trade union lawyers represented workers in only 8% of cases.

The cases can be categorised as follows: wages and other financial emoluments (36%); termination of the employment relationship (41%); disciplinary cases, including dismissals (16%); and the determination and modification of employment contracts (7%).

Number of cases (country-wide)

In 2003 the number of new labour-law cases brought before Hungary's 20 Labour Courts was 29,995; in addition, 26,718 cases were completed and 17,867 cases were continuing. The busiest court was the Budapest Labour Court, with 6,713 new, 6,272 completed and 4,443 ongoing cases.

History

A new Labour Code, which sought to reflect the needs of the new market economy, came into force in 1992. The Code also embodies a new approach and regulations in the field of labour disputes. The most important changes can best be highlighted by comparing the new labour dispute system with its predecessor.

Labour dispute system before 1992

Before 1992 labour disputes were regulated by the 1967 Labour Code (Act II of 1967 which entered into force at the beginning of 1968). A uniform procedure applied to all employees, including public servants.

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[1] In a study based on a sociological survey published in 2000 analysing 339 Labour Court cases (Beáta Nacsa and Erzsébet Berki: *A munkaügyi bíróság gyakorlata* [Functioning of the labour court], *Jogi Tanulmányok* [Law studies] (Budapest: ELTE, 2000).

The structure of the judicial system differed from the system established in 1992 – between these two dates it developed in three distinct stages:

a) 1968–72 In this period at the first level of dispute settlement so-called *labour arbitration committees* were established at company level wherever trade unions were operating (more than 90% of enterprises). These committees comprised three members, elected for five years by the workers. Candidates were nominated by the employer and the workplace trade union. The committee constituted a special first-instance "quasi" judicial forum in labour disputes. Its decision – in the absence of an appeal – had the validity of a court decision and was appealable before the local first-instance civil courts, which could make the final judgement. Only in tort cases was it permissible to apply to the Appeal Court.

   At this time there were no regulations governing special interest disputes.

b) 1972–89 In 1972 separate Labour Courts were established as first-instance courts at the county (regional) level and in Budapest.

   Although the other elements of the judicial system remained as they were the establishment of a specialised court has had a major – and positive – effect on the evolution of labour law through developing case law.

c) 1989–92 In 1989, signalling the impending political, economic and social transformation, new collective elements appeared in labour law and labour dispute regulation. The law to some extent recognised the possibility of interest disputes and allowed a special conciliation procedure to settle them. Each party had the right to delegate one member (their representative) to the three-person conciliation committees, who would then together select the third member. The committee's decision was not binding unless the parties had submitted themselves to it beforehand in writing[2].

This new institution was necessary because of increasing strike action and served to promote the peaceful settlement of collective disputes.

Labour dispute system after 1992

The new Labour Code was adopted on 1 July 1992, establishing a new system for labour dispute settlement.

Main characteristics of the new system

- Enterprise-level **arbitration committees** were abolished along with their status as obligatory first-instance tribunal. The cause of this change was the diminished size of many privatised and newly founded undertakings as a result of economic restructuring which made the establishment of the earlier arbitration committees impossible[3]; moreover, these committees were seen as a state-socialist creation belonging to the ideology of factory democracy.
- **Collective labour disputes (interest disputes)** were recognised and regulated as a new type of dispute.

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[2] Act II of 1967 Art 66/A.

[3] The 1967 Labour Code ordered the setting up of these committees in every enterprise where a trade union was operating. According to the new Act on the right of association – Act II of l989 – at least 10 people are required to found a trade union: the majority of new enterprises have fewer than 10 employees.

Formerly, interest disputes were not officially recognised: according to state-socialist doctrine, the relationship between workers and employers was based on the fundamental and ultimate harmony of their interests.

- It became possible to lodge an **appeal** with the Appeal (County) Court in **every type of case** over which the Labour Court had jurisdiction.
- After a Constitutional Court decision **trade unions could not represent the workers** in labour disputes without prior authorisation of the workers concerned.
- State-financed **legal aid** to trade unions was terminated.
- The new legislation distinguishes between interest and labour-law disputes **(two types of labour dispute)**;
- Implementation of labour rights is supported by special **public sanctions and processes** (for example, penalties issued by the labour inspectorate or initiation of criminal proceedings);
- The Hungarian Constitution and a special act guarantee[4] **the right to strike** as a means of applying pressure during interest disputes.

Types of labour dispute

Collective labour disputes

The new legislation regulates two types of labour dispute: collective (interest) disputes and labour-law disputes. *Collective labour disputes* are so-called interest disputes[5]. The definition of these disputes given by the Labour Code is: "Any dispute arising in connection with employment relationships (collective labour dispute) between the employer and the works councils or between the employer (the employer's interest representation organisation) and the trade union, which does not qualify as a legal dispute, shall be settled by negotiations between the parties concerned" (Art. 194, para 1).

These disputes can be characterised in terms of their actors, subject matter and procedures.

The actors on the workers' side can only be "collective" actors, such as trade unions and works councils; their counterparts on the other side can be the employer(s) or employers' organisation.

The law does not prescribe any entitlement criteria for trade union involvement in collective labour disputes, so any trade union (with at least one member at the relevant workplace) can initiate a dispute with the employer, regardless of its representative status or entitlement to conclude collective agreements.

As to works councils, both local and central works councils[6] have the right to initiate collective labour disputes; this right also pertains to individual worker representatives.[7]

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[4] Act VII of l989 on the right to strike.

[5] Labour Code, Part IV, Labour disputes, Chapter 1, Collective labour disputes, Art. 194–196.

[6] A works council or employee representative shall be elected in a given workplace only if the manager of that workplace is entitled, in part or in full, to exercise employer's rights in connection with works council rights (Labour Code, Art. 43, para 3).

The trade union can be represented at the negotiating table by its leader or any other person entitled to do so by the trade union's statute or authorised by the union leader. The works' council can also exercise its applicable rights.

The employer must be represented by a manager at the appropriate level (for example, the managerial counterpart of the central works council must be the managing director, while at local level the plant manager is the proper negotiating partner of trade union representatives).

The subject matter of collective labour disputes can be classified in terms of the actors. Interest disputes launched by trade unions are related to collective bargaining and the material conditions provided by the employer for the trade union functioning at the workplace (for example, use of premises). Works councils can initiate collective labour disputes in relation to three things: (i) concluding a works agreement with the employer, (ii) financial aspects of works council elections and operational costs[8], and (iii) issues related to works council co-determination and information and consultation rights.

Sometimes, it is difficult to distinguish between interest and legal disputes in a given situation. For example, the employer must provide premises for the trade union. However, the size, location, and so on, of such premises are subject to mutual agreement: failure to reach agreement can qualify as a collective labour (interest) dispute.

Procedure in collective labour disputes

In these disputes the law imposes an **obligation of conciliation** on the parties and at the same time offers them a choice of three forms of conciliation.

The mildest form of conciliation involves **the parties engaging in direct dialogue** to solve their problems. Negotiations commence on the submission to the other party of a written statement by the party initiating the conciliation. This is an important element of the process because in many cases disputes arise from a lack of or unsuitable information. The measure which forms the basis of the dispute shall not be implemented during the negotiations, which must not exceed seven days; furthermore, the parties shall refrain from any action that may jeopardise agreement.

If the parties cannot agree during the negotiations they can have recourse to a mediator or arbitrator.

In order to settle a conflict, the parties may employ the services of an independent mediator. Parties shall jointly request the mediator's participation. The mediator can be anybody willing to act as such: there are no limiting legal criteria (except insofar as the mediator must be independent of both the case and the parties). The mediator may request information from the parties, to the extent deemed necessary, during the negotiations. Upon the conclusion of

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[7] If there is more than one works council or employee representative at an employer, a central works council shall be formed alongside the local works councils. Members of the central works council will be delegated by the local works councils in proportion to the number of workers employed at the workplace they represent (Art. 44, para 2).

[8] Employers shall cover the works council's justified election and operational costs to be determined by mutual agreement. Any dispute in this connection shall be settled by negotiation (Labour Code, Art. 63).

negotiations the mediator shall summarise in writing the parties' positions and the results of their negotiations, and present the report to the parties; however, the mediator is not entitled to decide the dispute.

Arbitration can be the most effective type of collective labour dispute settlement. The arbitrator can decide disputes and their decision is binding, if agreed in advance by the parties in writing. The arbitrator may set up a conciliation committee to which the parties shall delegate an equal number of representatives. Anyone may serve as an arbitrator.

While the direct negotiation of the parties and mediation are always **voluntary** processes, chosen by the parties, in some cases arbitration can be obligatory. An arbitrator is **compulsory** for disputes on the following issues: disagreement on the exercise of the trade union's right to inform its members concerning matters it considers important; the employer's failure to provide the trade union with adequate premises; disagreement on works council costs to be covered by the employer; finally, works council co-determination rights.

Experts or witnesses may be consulted in the course of negotiations, mediation and arbitration, by **mutual agreement**.

Disputes can be **concluded** by an **agreement** reached by the parties (in the case of direct negotiations and mediation) or by the **arbitrator's decision**.

Both an agreement and an arbitrator's decision shall be construed as a **collective agreement** and so are **legally binding**.

Cost of the procedure

Unless otherwise agreed, substantiated and necessary costs incurred in connection with negotiations or arbitration shall be covered by the employer.

Should no agreement be reached, the parties **have no judicial redress**, resulting in further negotiations, and even strike action.

Labour Mediation and Arbitration Service (MKDSZ)[9]

After the introduction of mediation and arbitration in the Labour Code it proved difficult to find people willing to act as mediators or arbitrators and for the parties to reach agreement in this connection. This process had no traditions in Hungary, so the parties were unable to draw on experience. Furthermore, in the case of hostile disputes it was unlikely that the parties would agree on anything, let alone the choice of a mediator or arbitrator.

In order to promote this new type of interest dispute settlement a special service was established, the Labour Mediation and Arbitration Service. The new Service was set up in July 1996 by the National Interest Reconciliation Council (OÉT)[10]. The Service is financed

[9] Munkaügyi Közvetitő és Döntőbirói Szolgálat.

[10] Tripartite social dialogue body at the national level (Országos Érdekegyeztető Tanács). It comprises representatives of the national organisations of workers and employers and of the government.

from the state budget and the director and secretary are appointed as civil servants by the Minister of Labour by mutual agreement with the OÉT; otherwise, the Service and the mediators/arbitrators are independent of the ministry and the government. The Service is accountable to the National Interest Reconciliation Council and the director must make an annual report to the OÉT on the MKDSZ's activities.

The mediation and arbitration service is provided by listed independent mediators and arbitrators. Potential mediators are selected by the OÉT. Anybody satisfying the following conditions can be a mediator: Hungarian citizenship, university degree (in any subject, not necessarily in law), five years' experience in industrial relations or labour law, proven ability to tackle conflict, good communications skills. Candidates go through a selection process before a tripartite committee.

At present there are 98 mediators on the list from whom disputing parties can choose.

Mediators are put on the list for five years. They are registered by the Ministry of Labour and Social Affairs and a notice is published about them in the Official Bulletin describing their profession, experience, education and geographical and sectoral scope.

Disputing parties can jointly choose a person from the list. If they cannot agree, they can ask the Service to propose a number of candidates. The director of the Service – on the basis of information provided by the parties on the main points of their dispute – chooses 3–5 persons from the list in alphabetical order from whom the parties can choose.

The mediators are independent of both the parties and the Service. They are paid only for mediation work actually performed, and after being selected for mediation/ arbitration work they must conclude a contract with the Service (in the case of obligatory arbitration, with the employer).

The MKDSZ provides data and other background information to facilitate the mediator's work.

Mediators' costs and remuneration are covered by the Service (MKDSZ), while arbitrators are paid by the employer.

Mediators' remuneration decreases the longer the dispute continues (assessed every two days) and is paid by the day up to a maximum of eight days. In this way the Service seeks to encourage the parties and the mediator to resolve the dispute as soon as possible.

The Service provides background information and administrative assistance for the mediation/arbitration and organises training programmes for registered mediators. The Service has its own Ethical Code which lays down the behaviour expected of mediators.

The Standing Orders of the Service are approved by the OÉT.

The Standing Orders and the list of mediators are published in the Official Journal (*Magyar Közlöny*).

According to the director's annual report the number of requests made to the Service for mediators or arbitrators was rather low in 2000. There were only 19 requests, of which six asked for mediation and two required arbitration; in five cases the parties only sought advice, while in the remaining cases the Service had no competence.

Labour-law disputes

The second type of labour dispute regulated in the Labour Code is labour-law disputes connected to individual employment relationships or collective labour relations. Such disputes tend to arise from violation of the rights of workers or employers or of industrial relations actors.

The legal definition of labour-law disputes. In pursuit of a lawsuit related to the employment relationship or under the Act, or collective or works agreements, employees, trade unions or works councils may initiate employment-related legal action in accordance with the Act. Unless the Act provides otherwise, the employer may initiate legal action in pursuit of employment-related cases[11].

The circle of actors potentially affected by such disputes is wider: employees can also be parties to them. The concept of legal dispute covers violations of both the law and collective agreements (Labour Code, Part IV, Chapter II, Art 199–202). However, there is one exception under the law: cases brought in relation to decisions adopted by the employer within its power of discretion can be initiated only if the employer has violated the law relating to such decisions.

Deadline

The legal process may be launched within the period of limitation, with the exceptions of cases in which a lawsuit may be filed within 30 days of notification of the action, in connection with:

- amendment of the employment contract implemented by unilateral decision of the employer;
- termination of the employment relationship, including termination based on mutual consent;
- extraordinary dismissal;
- adverse legal consequences arising from an employee's breach of obligation;
- written notice demanding repayment of wages[12] and compensation for damages, including employee payments to cover inventory shortfalls.

Legal action shall have no dilatory effect on implementation of the action (there are only a few exceptions to this general rule).

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[11] Labour Code, Art. 199, para 1, 2.

[12] Any wages paid which should not have been paid may be reclaimed from the employee within 60 days upon issue of a written notice. Employers may demand payment from employees regarding employment-related liabilities by written notice (Art. 162 of the Labour Code).

The process

Labour law disputes shall be decided in court: both the employees/trade unions/works' councils and the employers must pursue their case before a court. There are only three exceptions to this general rule, the employer having the power to decide in such cases:

- payments from employees to cover damage for which they are responsible, including compensation for inventory shortfalls, as authorised by the collective agreement[13];
- notice demanding repayment of wages[14];
- disciplinary measures[15].

However, the employer's decisions can be challenged before a court – in the absence of such a challenge the employer's decision is final.

Conciliation

Hungarian labour law does not regulate general and obligatory forms of **alternative dispute resolution**, such as arbitration, in labour law disputes. It provides only the possibility of conciliation on the basis of voluntary agreement.
A clause ordering the participation of a conciliator in labour law disputes may be included in the collective agreement or in the employment contract for the purpose of attempting to reach an agreement. Negotiations shall be initiated with the conciliator, who shall set down the agreement in writing.
There are no legal rules for the selection and procedures of the conciliator: they must be determined by the parties involved on the basis of mutual consent.

The conciliator can be anybody on whom the parties are able to agree. The MKDSZ has no authority to intervene: its scope is limited to collective (interest) labour disputes.

Since 2002 a newly amended act[16] has offered further help to contending parties in resolving their dispute. In civil law cases and labour disputes the disputing parties can involve a third, impartial, independent (legal or natural) person to mediate between them and help them to reach a conclusion or a written agreement.

Mediators are registered by the Ministry of Justice and the list of their names is published in the Official Bulletin of the Ministry of Justice.

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[13] The employer may enforce his claim for damages caused by the employee before a court. The collective agreement may determine the maximum extent of employee liability. In this case the standard procedure for determining damages shall also be established in the collective agreement (Art. 173 of the Labour Code).

[14] See footnote 13.

[15] In the event of a grave violation by an employee of any obligation stipulated in the employment contract, the collective agreement may prescribe legal consequences, in addition to the provisions concerning extraordinary dismissal, while also determining the related rules of procedure (Art. 109, para 1, of the Labour Code).

[16] Act LV of 2002 on mediation activity. The Act was adopted by Parliament on 3 December 2002.

The criteria of acceptance as a mediator are: university degree (not necessarily in law) and at least five years' experience in this area, no criminal record, and so on. Individuals may apply to be registered as a mediator. Registration is subject to a decision of the Minister of Justice. In the case of refusal the candidate may appeal to the court.

Selection of a mediator takes place on the basis of mutual agreement. A mediator has the right to accept or refuse the parties' invitation.

The law regulates the basic rules and principles of the mediation process: for example, the mediator must hear the parties on equal terms. The process can be conducted in the presence of both parties or, with the parties' consent, at separate sessions. The mediator – after consultation with the parties – may involve experts and other persons in the process.

Costs shall be covered by the parties on the basis of mutual agreement. The mediator's remuneration is agreed between the mediator and the parties.

The process shall be completed after an agreement is concluded or, if no agreement is reached, four months after the commencement of the process.

The agreement can be regarded as a simple civil law agreement. The parties may notwithstanding this go to court even after an agreement has been concluded.

Judicial system

Structure

In Hungary specialised labour courts were set up in 1972 to hear labour-law disputes. Labour courts function as first instance courts.

There is the possibility of appeal in all cases to the County (Regional) Court. At this second instance level the process once again becomes part of the traditional civil court system. At the County Court there are specialised labour-law panels in which specialised labour lawyers deal with labour-related and social security cases.

Scope

Their scope extends to all labour-related matters, including individual and collective labour disputes, as well as cases related to labour inspection, labour safety and health (so-called public administrative decisions) and social security issues.

Composition

Labour courts are organised in every county and in the capital[17]. They consist of three members, one professional judge and two lay judges. The lay judges are elected by the general assembly of the county council (*önkormányzat* or "self-government"). In general, citizens, local government and civil organisations – including trade unions and employers'

[17] Currently, there are 20 labour courts: 1 in each of the 19 counties and 1 in Budapest.

organisations – as well as, for example, pensioners' organisations are entitled to nominate candidates. According to the law, lay judges sitting in a labour court must be nominated in the first place by employees' and employers' interest representations. Most lay judges are retired persons. As far as the composition of the court is concerned, there is no legal obligation for the tribunal to include one employees' representative and one employer's representative in every case: its three members notwithstanding, the composition of the court is not typically "tripartite", but determined by the president of the court[18].

The lay judges must swear an oath before commencing their activities. Within the judicial process they have the same rights as professional judges. In case of disagreement the members of the court must vote for or against, so the lay judges have the possibility of taking a decision against the professional judge: in such cases the minority professional judge has the right to attach his or her written opinion to the official judgement in a sealed envelope. This envelope is opened (by the appeal court) only in case of an appeal.

If the lay judges are employed, their employer must continue to pay them their average wage; if they are not employees, they have the right to remuneration from the state in the amount of 25% of the lowest salary received by professional judges.

The Appeal Court consists of three professional judges. Its decision is final. In exceptional cases an extraordinary petition may be filed with the Supreme Court within 60 days of the Appeal Court decision.

Procedure

In labour-law disputes the general rules of civil procedure shall apply unless otherwise prescribed in the special chapter of the Code of Civil Procedure[19] concerning labour-related matters.

Special procedural rules in labour-law disputes include the following:

- The president of the court **must begin with an attempt at conciliation** between the parties or their representatives, with the aim of reaching an agreement. During this part of the process the judge discusses the case with the parties, taking into consideration all known circumstances.
- If conciliation is unsuccessful the trial begins.
- The **first trial** must be **scheduled** to take place within 15 days of the case coming to court.
- Cases aimed at the reinstatement of a terminated employment relationship shall take priority.
- In cases aimed at the payment of wages or presentation of the relevant documents by the employer upon termination of an employment relationship the court may order **interim measures**.

[18] Act LXVII of 1997 on the legal status and remuneration of judges, Chapter XI: The legal status and remuneration of lay judges.

[19] Act III of 1952 on Civil Procedure, Chapter XXIII, Art. 349, para 1.

- Trade unions are entitled to **represent** their members, if duly authorised, before the court or any other authority or agency in matters concerning living and working conditions.
- Employers' organisations can be authorised by their members to represent them before the Labour Court.
- Works' councils, trade unions and workers' organisations without legal personality can also be parties to a legal action[20].
- In some (urgent) cases the court shall make its decision within 15 days in non-litigious proceedings (for example, disputes related to the nomination or election of works' councils; objections (the trade union "veto"); disputes relating to entitlement to conclude a collective agreement; violation of the works' council's information and consultation rights.
- Employers shall justify all actions in writing if the affected employee is entitled to seek legal redress in respect of them. In such cases the employee shall be duly informed regarding the manner and time limitation of the available legal remedy. If the employee fails to bring his or her case within the prescribed deadline because he or she was not appropriately informed the court will accept this explanation.

Costs of judicial procedure

In labour-law disputes the parties are entitled to exemption from court costs. However, employers who lose their case must pay court costs.

The remuneration of the lawyers (legal counsellors), however, is not part of the court costs and so must be paid by the disputing parties. The delegated party (including also the delegated workers) has to cover the remuneration of the other party's lawyer, too.

Trade unions can employ lawyers to represent its members in labour-related cases before the court or other authorities. These lawyers are paid by the trade union. If employees lose a case they are liable to pay the costs of the other party's lawyer; however, in many cases, trade unions assume these costs on the worker's behalf.

Enforcement of labour law

Some categories of labour (workers') rights are supported not only by labour law and civil procedure (labour disputes, access to a labour court), but also by public administrative means. **Labour inspection** procedures[21] can be used, for example, in such cases as discrimination, violation of the rights of working women, young workers and the disabled, violation of working-time, rest-time or wage regulations, infringement of the right to organise, regulations concerning the protection of workers' representatives and so-called false labour contracts (to avoid social insurance contributions, and so on). Labour inspectors can impose fines on employers and/or can order the termination of illegal activities; they are also entitled to prohibit illegal employment and oblige employers to fulfil their obligations.

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[20] Works' councils have no legal personality, while trade unions and employees' organisations are legal entities but only after registration by the County Court. However, they may be party to a legal dispute in a court of law, for example, in protecting their elected representatives against unfair dismissal.

[21] Act LXXV of 1996 on labour inspection.

Unfortunately, the effectiveness of labour inspection is not high due to the low number of inspectors[22].

Another possible means of promoting the implementation of labour legislation is the instigation of legal proceedings against any person violating workers' rights in such cases as discrimination, infringement of the law on establishing or terminating employment relationships or wage regulations, the violation of workers' representatives' rights, illegal employment of foreigners, violations related to temporary agency work and infringement of labour safety and health.

A very important new instrument of workers' protection was introduced in 2003. The new Act on the promotion of equal treatment and equal opportunities[23] introduced the possibility of **"public interest action"** (actio popularis) in cases of group-based discrimination.

Action in labour disputes can also be taken by civil interest representing organisations, including trade unions.

Conclusions

In the field of collective labour disputes the legislation is good but there is no practical implementation of it because of inadequate resources. It is likely that solutions may be found in the collective bargaining possibilities available to the social partners: for example, do they have enough scope to regulate their relationship in a collective agreement? Does the law encourage the social partners to bargain and consult with each other and are there adequate incentives for them to participate in social dialogue? When the law regulates everything in detail there is insufficient scope for interest disputes.

In the field of legal disputes it seems necessary to introduce an alternative conciliation process prior to court procedure which is impartial and independent and in which representatives of employers and workers can both take part.

[22] Fewer than 200 labour inspectors are employed in Hungary to monitor safety and health in the workplace, as well as the violation of other labour rights.

[23] Act CXXV of 2003, Art. 20.

Labour Courts in Switzerland

Jean-Claude Prince[1]

The Industrial Tribunal of the Republic and Canton of the Jura

Introduction

In the Middle Ages, judges in France regarded as wise and able to dispense good advice were referred to as *'prud'hommes'*. In 1806, Napoleon founded the '*Conseil de prud'hommes*' in Lyon: it had the role of resolving minor disputes between the manufacturers and workers of this large industrial city. A decree issued in 1809 allowed the extension of this type of court to other towns. By the year 1847, there were 75 such courts in France.

In 1811, Napoleon introduced '*Conseils de prud'hommes*' in Belgium and the Rhineland. '*Tribunaux de fabriques*' (factory tribunals) were subsequently established in Prussia, whilst in other regions of Germany, labour courts were created in the main industrial towns.

In Italy, it was not until 1878 that a '*Conseil de probiviri*' was set up for the silk industry in Como. In 1898, legislation allowed the extension of this type of court throughout the entire country, but only on an optional basis.

The birth and development of the trade union movement from the second half of the nineteenth century onwards gradually provided the conditions for these institutions to comprise equal numbers of employers and employees; they had at first appeared to the labour movement as tools of the bourgeoisie, used to ensure the maintenance of the established order for its own benefit.

In Switzerland, according to the Federal Constitution (Article 122.2), legal organisation, procedural matters and the administration of justice are within the jurisdiction of each of the 26 cantons (districts) and demi-cantons which make up the country.

Several particular areas of law tend to emerge from these specialised civil courts. The law restricts their jurisdiction to certain types of case determined by their subject matter (rental lease tribunals, trade tribunals, industrial tribunals or '*conseils de prud'hommes*').

The first Swiss labour court was established in Geneva in 1883, based on the French model. Neuchâtel, a Prussian principality, followed in 1885, this time based on the German model. As a result of the rapid industrial expansion which took place in Switzerland at the end of the nineteenth century, their example was followed successively by the cantons and demi-canton of Vaud (1888), Bâle-Ville (1889), Soleure (1891), Lucerne (1892), Berne (1894), Zurich (1895), Fribourg (1899), Saint-Gall (1897), Argovie (1908) and Valais (1924).

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[1] Central Secretary of Union syndicale, Switzerland

Following a referendum held by the trade unions and left-wing parties, the most recently formed Swiss canton (1979), the Republic and Canton of the Jura (65 000 inhabitants, three districts), also set up in 1983 a '*Conseil de prud'hommes*' (Industrial Tribunal), which is the subject of this case study. Its special features are straightforward proceedings, delivered free of charge, and accessible to all.

The Industrial Tribunal of the Republic and Canton of the Jura

1. General

1.1. The Industrial Tribunal is a court of the *Tribunal de première instance* (Court of First Instance).

1.2. The Code of Civil Procedure is applicable by analogy to any cases not governed by the legislation establishing the Industrial Tribunal.

2. Jurisdiction

2.1. The Industrial Tribunal rules in any dispute between employers and employees arising from an industrial contract, except for:

2.1.1. Disputes between public authorities or institutions of public law and their staff having public law status.

2.1.2. Disputes referred to special courts or to arbitration tribunals by other laws or conventions.

2.1.3. Criminal offences connected with a dispute falling within its jurisdiction and the civil claims subject to a civil action stemming therefrom.

2.2. Where jurisdiction is in doubt, the Civil Court of the '*Tribunal cantonal*' (Cantonal Court) makes a ruling.

3. Organisational structure

3.1. The members of the Industrial Tribunal are appointed for four years.

3.2. They take office at the same time as judges and officials.

3.3. A judge of the Court of First Instance presides over the Industrial Tribunal.

3.4. The Court of First Instance appoints a registrar of the Industrial Tribunal and an alternate from amongst the registry staff.

4. Occupational groups and sections

4.1. Group 1: watchmaking, crafts involving metal, metallurgy, mechanical engineering, electricity, electronics, plastics and any other related industry;

4.2. Group 2: construction, wood, civil engineering, mining, agriculture, forestry, fish farming, horticulture, animal husbandry and any other related sector;

4.3. Group 3: food trade and industry, tobacco, retail trade, textiles, footwear, garment industry, graphic arts, services (hotel and restaurant trade, banks, insurance, etc.), liberal professions, hospitals and other activities.

4.4. Disputes over whether an enterprise belongs in a given group are settled by the chairman of the Cantonal Court

4.5. Each group is divided into an employers' section and an employees' section.

4.6. It is not possible to belong to two groups or two sections at once.

4.7. Persons who may individually or collectively sign binding acts on behalf of an enterprise or company, such as directors, managers or authorised representatives included in the trade register, are also considered as employers.

5. Jurisdiction

5.1. The chairman

5.1.1. Conducts proceedings and plenary sessions.

5.1.2. Makes rulings alone in disputes worth less than 8 000 francs (the equivalent of about two months' pay on average).

5.1.3. Rules on provisional measures based on the employment contract.

5.1.4. Conducts proceedings implementing the judgment.

5.1.5. Conducts conciliation sessions.

5.1.6. Processes applications for the procedure for collecting evidence where there is a risk that it will disappear or be damaged.

5.2. The Industrial Tribunal

5.2.1. When the amount at issue is at least 8 000 francs, the Industrial Tribunal comprises the chairman, the registrar and two assessing judges (an employers' representative and an employees' representative).

5.3. Appointment of judges

5.3.1. judges are appointed by the chairman before each hearing and chosen from amongst the judges from the occupational group concerned (half from the employers' section and the other half from the employees' section).

5.3.2. When that is not possible, the chairman appoints a judge from another occupational group in the same section. To ensure that the Industrial Tribunal makes a proper judgment, a majority of the judges must have participated in all the proceedings necessary to be able to understand the case.

5.4. The registrar

5.4.1. The registrar is available at the times established and published by the Industrial Tribunal.

5.4.2. The registrar visits the principal towns of the three districts (by appointment).

5.4.3. The registrar provides information free of charge on any question concerning the jurisdiction of the Industrial Tribunal.

5.4.4. The registrar attempts to reconcile the positions of the two parties and may summon them to attend if necessary.

5.4.5. The registrar receives applications made to the Industrial Tribunal.

5.4.6. The registrar drafts the record of the plenary session and proceedings; he is responsible for administrative matters and correspondence. In addition, he manages the Registry and is responsible for keeping the accounts.

5.5. Failure of a judge to attend

5.5.1. Any judge who does not attend a hearing or who fails to appear without having submitted a valid excuse in good time will be fined by the chairman and made to pay the costs occasioned by his absence or delay.

5.5.2. If he subsequently submits a valid excuse, this penalty may be cancelled.

6. Challenges

6.1. Where a member or the registrar of the Industrial Tribunal has been challenged, the provisions of the Code of Civil Procedure apply.

6.2. Such requests are ruled upon by the Cantonal Court once the relevant party has withdrawn and been replaced by his alternate.

6.3. In the event that all or the majority of the members of the Industrial Tribunal are challenged, the Civil Court rules. If it declares that the challenge is founded, it refers the hearing of the case to an Industrial Tribunal composed of members who have not been challenged.

7. Premises and staff

7.1. The State makes the necessary premises and staff available to the Industrial Tribunal.

7.2. Sessions of the Industrial Tribunal take place in meeting rooms and not in courtrooms (in order to avoid ‘judicialising’ the procedure, in conformity with the underlying meaning of the term ‘*prud’hommes’*).

8. Principles governing appointments

8.1. Three assessors are appointed for each section, according to rules set out in the following articles.

8.2. Only one judge per section may be appointed from the same company.

8.3. The Industrial Tribunal sits in the allotted format for proceedings and rulings.

9. Eligibility

9.1. Eligibility conditions are defined in conformity with the legislation on the organisation of legal proceedings.

9.2. Moreover, candidates must have been employed for at least six months in a company within the group concerned.

10. Applications

10.1. Four months before the Tribunal begins to function, the Cantonal Court places a call for applications in the Official Journal, indicating the formalities to be completed.

10.2. Applications must reach the Cantonal Court within a period of thirty days following publication.

10.3. Applications must be signed by candidates; they must include the date of birth, address and occupation of the candidate, the company which he manages or which employs him, the date when his activity there began and the post he occupies. Foreigners must also produce a certificate attesting to the fact that they enjoy political rights. If applications appear dubious, the chairman of the Cantonal Court carries out the necessary checks and rejects any non-eligible candidates.

11. Appointments

11.1. If there are more suitable candidates for a section than there are posts to be filled, the Cantonal Court makes an appointment, giving fair consideration to the candidates proposed by trade union and occupational organisations.

11.2. If that is not the case, candidates are appointed automatically.

11.3. If there are not enough candidates in a given section, the Cantonal Court requests the organisations concerned to make further proposals. If there are no further suitable proposals, applications are invited by call. The Court then makes the appointments.

11.4. If a vacancy arises during the period for which the appointment was made, the Cantonal Court makes an additional appointment to last until the end of that period, on the basis of proposals from occupational organisations.

11.5. The Cantonal Court publishes a list of the judges appointed in the Official Journal.

12. The amount at issue

12.1. The amount at issue is determined by the value of the application irrespective of the counter-claim.

12.2. The amount at issue is comprised of the gross pay minus contributions to social insurance, sickness insurance and taxes deducted at source.

13. Submission of the application

13.1. Persons wishing to refer a case the Industrial Tribunal apply to the registrar, either in writing or verbally, summarising the dispute and drawing conclusions.

13.2. Any application made to an authority which clearly does not have jurisdiction is referred without delay by the latter to the Industrial Tribunal, without prejudice to the applicant. The parties are informed immediately.

14. Conciliation

14.1. The registrar attempts to resolve the dispute between the parties and may summon them to appear.

14.2. In urgent cases, they may be called upon to appear at short notice.

14.3. The registrar may also call upon the parties to appear before the chairman for conciliation purposes, if the latter agrees.

14.4. Any settlement is recorded in the summary record and signed by the parties.

14.5. Such settlements are legally binding.

15. Preparation for the hearing

15.1. If the attempt at conciliation is not successful, the registrar notes the salient points of the case and forwards the case papers to the chairman. If the latter deems it necessary, he orders the parties to exchange written pleadings. If the proceedings were instituted by written pleadings, the chairman allows the defendant to produce a counter-statement.

15.2. Where the original application was made by written pleadings, the chairman allows the defendant to produce a counter-statement.

15.3. The chairman summons the parties, indicating the day, time and place of the hearing. The summons also contains the conclusions from the application and a notice outlining the legal consequences of the wrong concerned.

16. Appearance at the hearing

16.1. The parties appear in person. They argue their cases orally.

16.2. If one of the parties is prevented from attending for reasons which are recognised as valid by the chairman, he may be represented at the hearing by an adult member of his family; by virtue of a written proxy, he may be represented by a person exercising the same occupation or employed in the same company.

16.3. When the presence of the parties is not necessary to the hearing, the chairman may exempt them from having to appear personally if they are represented by an agent.

17. Assistance

17.1. The parties may be assisted in conciliation hearings and during proceedings by an agent or by a person of their choice.

18. Agents

18.1. The parties may call upon an agent to represent them during the audience, to assist them or to fulfil other procedural requirements in their stead.

18.2. The following are accepted as agents:

18.2.1. Authorised lawyers
18.2.2. Representatives of employees' or employers' organisations (local, regional or cantonal) included in the list held to this effect by the Cantonal Court.
18.2.3. Senior executives of the company for the employer.

18.3. The provisions of the Code of Civil Procedure apply to agents other than authorised lawyers.

19. Free legal aid

19.1. The chairman may appoint a lawyer to a party which so requests, as long as the latter is eligible for free legal aid.

20. Languages

20.1. The proceedings take place in French.

20.2. Persons who either do not understand French at all or who do not have a sufficient understanding of it may use their mother tongue. Whenever possible, the State provides an interpreter for them free of charge.

21. Public nature of the proceedings and rules of procedure

21.1. The proceedings of the Industrial Tribunal are held in public. Cases are decided according to the ordinary rules of procedure, but the time periods are reduced as far as possible.

21.2. The usual procedural deadlines are not suspended over public holidays or the summer holiday period.

21.3. The provisional measures set out by the Code of Civil Procedure and the enforcement of rulings are governed by the summary procedure.

22. Determination of the facts

22.1. The Industrial Tribunal determines the facts as a matter of course.

22.2. Admissible forms of evidence are not pre-determined by law.

23. Deliberations and voting, delivery of the judgment

23.1. Once the final speeches for the defence have been heard, the Industrial Tribunal deliberates in closed session and delivers its judgment.

23.2. The judgment is delivered orally to the parties forthwith, along with the possible appeal options available.

23.3. The parties may decide not to have the judgment delivered orally, in which case the operative part of the judgment is delivered to them in writing.

23.4. Where the case is to be appealed, a brief written explanation of the judgment is given.

24. Appeals

24.1. Any judgment of the Industrial Tribunal may be appealed under the conditions and according to the procedure outlined in the Code of Civil Procedure.

24.2. Where the amount at issue is less than 8 000 francs, the parties may apply to have a decision of the chairman of the Industrial Tribunal disallowed.

24.3. The time-limit for appeals is thirty days from the delivery of the judgment.

25. Procedure before the Civil Court

25.1. Authorised agents (lawyers, representatives of employees' or employers' associations, or else senior executives of the company concerned) are allowed to represent or assist the parties before the Civil Court.

25.2. The chairman of the Civil Court decides whether or not there should be a full hearing of the parties before the latter.

26. Request for a review, admissibility

26.1. The parties may apply to the Industrial Tribunal which made the ruling for a review in the cases set out in the Code of Civil Procedure, provided methods and time-limits are observed:

26.1.1. Where new facts have been discovered since the ruling.

26.1.2. Where the parties have not been able to find or obtain evidence demonstrating important facts of the case until after the ruling.

26.1.3. When it appears that a wrongful act has influenced the decision.

27. Legally binding rulings

27.1. Rulings of the chairman and the Industrial Tribunal may be implemented ten days after being delivered. The settlements, agreements and withdrawals which they incorporate are implemented ten days after being signed.

27.2. The provisions of the Code of Civil Procedure are reserved.

28. Costs

28.1. Proceedings before the Industrial Tribunal are free of charge for amounts of up to 20 000 francs.

28.2. Where the amount at issue is higher, costs are generally borne by the parties.

28.3. The judge makes a ruling on costs based on equity.

29. Procedure in the event of unjustified conclusions

29.1. Any party which, through either carelessness or bad faith, has drawn manifestly unfounded conclusions, may be ordered to pay the same costs as would be paid for an ordinary civil action.

30. Statistics

30.1. The following cases were ruled upon in

	2001	**2002**
Cases pending on 1st January	33	19
Cases commenced after 1st January	110	95
Total	143	114
Cases settled by 31 December	124	92
Cases pending on 31 December	19	22
including those pending for more than a year	4	

	Cases commenced this year	
Under the chairman's jurisdiction (less than 8 000 francs):		
Group 1 (watchmaking, metallurgy, etc.)	17	11
Group 2 (construction, agriculture, etc.)	6	1
Group 3 (trade, hotels, restaurants, etc.)	33	37
Under the jurisdiction of the Industrial Tribunal (at least 8 000 francs):		
Group 1 (watchmaking, metallurgy, etc.)	14	12
Group 2 (construction, agriculture, etc.)	7	5
Group 3 (trade, hotels, restaurants, etc.)	25	22
Other	8	7
Total	110	95

Labour dispute settlement in South East Europe

The situation regarding labour disputes and their settlement is very similar in the different **countries of former Yugoslavia**. Such disputes are settled before the civil courts as, to date, no special labour courts exist in any of these countries. In all these countries most of the cases relate to unpaid wages.

Three main problems have been reported from all the countries. Firstly, the extremely long time period until the settlement of a case (on average between 2 and 5 years). Such timeframes deprive the plaintiff of any real right to justice, as implementation of rights becomes unrealistic. This is mainly due to the fact that no special labour courts exist; nor, what is more, are there any special procedures for the resolution of labour disputes in a general judicial system (e.g. giving labour disputes a priority over other cases).

A second problem is the high court fees. In the Republika Srpska, for example, they amount on average to as much as 100 Euros, compared to the minimum wage of 60 Euros. The fact that such fees are higher than a worker's monthly earnings naturally restricts access to justice for most workers. They might have a possibility of having their case heard in court only if the respective trade union can pay the costs entailed. This is the case in Serbia where the court fees have to be paid when lodging the complaint and may be as much as 150 Euros. In Montenegro, by contrast, no court fee is charged for disputes concerning the employment relationship.

The third point relates to enforcement of the judgments after such long proceedings. Enforcement is often impossible, given that in countries of transition into market economies, private and public employers disappear much faster from the market – due to insolvency – than in already stabilised systems. A provision such as exists in Montenegro, that the employer must execute the decision within 15 days of delivery, becomes a useless tool.

A worker claiming unpaid wages, and receiving, after three years, a judgement in his favour, will never actually receive his wages, since his former employer may have closed down the enterprise and no asset for enforcement remains. Instead the worker will have suffered extremely high costs for this court proceeding. It is therefore not surprising that people have little confidence in their court systems.

Trade unions have always promoted the establishment of special labour courts in their countries to tackle these problems. But so far this has not been a high priority in the government agendas. Nevertheless, the State budget in Croatia for 2003 for the reform of the judicial system has increased. And in Montenegro some discussions and initiatives on specialised labour courts are ongoing, though no official proposal has so far been formulated.

The situation is different in Romania and Bulgaria. In Romania a system of labour chambers does already exist and in Bulgaria they are about to be established.

In 1991 in **Romania** an act on procedures for the settlement of labour disputes came into force, according to which individual labour disputes had to be treated by the civil courts. In 1999 this law was repealed and a new one voted, copied from the German labour court system but adjusted to local needs. Since then Romania has specialized labour chambers in the civil courts. Only conflicts of law can be brought before the courts, such as disputes in connection with the conclusion, execution, modification, suspension and termination of the employment relationship and disputes on the implementation of collective agreements.

There are two levels of jurisdiction – the first instance (40 courts) and the High Court (one court for the entire country). In first instance the specialised panels for labour disputes are staffed with one professional judge and two assistants - one from the employers and one from the trade union side. The High Court judges on both facts and law, but the first instance judgments are already enforceable.

The assistants are appointed for four years and must be approved by the Economic and Social Council after having finished their legal studies. This was a way out of a situation in which Romania had an extremely high amount of law students seeking jobs.

They take part in the decision-making process but do not have the right to vote. Previously a majority voting system was applied, but a change was required after a judgment of the Constitutional Court.

In 2003 35,000 cases were brought before the labour courts, there being as yet no tradition to seek justice in labour matters. The time period for the settlement of a complaint in first instance is between 2 to 5 months but can take as much as two years. Most of the cases dealt with the execution of collective agreements, followed by dismissal cases and cases on civil damages compensation.

There are no court fees, but the losing party has to cover its own costs, as well as the expert fees.

The trade unions can represent the workers without their approval. This is judged positive, seeing that the workers themselves do not lodge a complaint under their name fearing detrimental effects on their employment relationship. But if the worker insists that the case should not go to court, the trade unions will withdraw the complaint.

At the moment Parliament is discussing a draft law about judicial procedure, foreseeing in first instance a professional judge and two assistants, who must have studied law but must also have five years' experience in the trade unions or employers' organisations. The period of mandate is to be raised to five years. Appeal courts as second instance are to be installed, to be staffed with three professional judges and two assistants.

The situation in **Bulgaria** is different from Romania, insofar as no labour courts are so far in existence. Their establishment represents a long-standing demand of the Bulgarian trade unions. The current situation is as follows:

All labour disputes go before the civil courts, with no special procedure being foreseen for this particular form of litigation. The system is the one of three instances, but the labour disputes under the value of 5,000 Leva (2.500 Euros) are not subject to appeal. The idea of

conciliation is not integrated into the juridical system. The trade unions can represent their members before the civil court and the procedure is free of charge. A court case can take between 3 to 6 years. In 2003 12,000 labour disputes were brought before the courts, mainly on dismissal and unpaid wages.

A workshop organised by the Ministry of labour and social policy, the ETUI and the Swiss Agency for Development and Cooperation was held in Sofia in March 2004, bringing together all major actors in the field – Ministry of Labour and Social Policy, Ministry of Justice, the two representative trade union confederations and the three representative employer organisations. In this frame the following statements were issued:

Under the process of accession to the EU the European Commission had demanded the establishment of labour courts by 1 January 2004.
The Minister of Labour and Social Policy now judges all partners sufficiently mature to start the process, which she set as a top priority for 2004. She would like to see Bulgaria becoming a model for the region in the establishment of labour courts. She admits that the lack of specialised labour courts deprives workers of the implementation of their rights. In practical terms, access to such courts should be free of charge, not like the civil system, but with court chambers with professional and lay judges from the two sides of industry in first instance.
The Minister of Justice also expressed the political will for the project, insofar as Chapter 6 of the Bulgarian Constitution allows the establishment of specialised courts. However, as the cost of such an establishment would represent a major investment for the State, an analysis of the reform of the jurisdiction is to be prepared by September 2004.

The Bulgarian trade union confederation CITUB wants the labour courts to be separate from the civil courts, with a good regional distribution. The civil procedure code needs to be changed and time periods for the proceedings need to be included. CITUB would like to see individual and collective disputes before the labour courts, while Podkrepa would opt for having only individual disputes before the courts, with collective disputes being brought before the already existing arbitration commission.

The employers supported the trade unions in their statements, while arguing for a prior need to change the labour code.

A tripartite working group has now been established to prepare a legal framework for the establishment of labour courts.

Comparative overview of labour courts in the EU

Tables

Summary table

Judicial system	• **Separated**: Denmark Finland France Germany UK	• **Integrated**: Austria Belgium Italy Portugal Spain	• **None**: Netherlands	
Composition	• **Tripartite**: Austria Belgium Denmark Finland Germany Luxembourg Slovenia Sweden	• **Bipartite**: France	• **Only professional judges**: Greece Italy Netherlands Portugal Spain	• **Other system**: Hungary UK
Training to lay judges	• **Yes**: Finland Hungary Italy Slovenia UK By the respective organisations: Austria France Germany		• **No**: Belgium Denmark Sweden	
Instances	• **One**: Denmark Finland Sweden	• **Several**: Austria Belgium France Germany Greece Hungary Italy Luxembourg Portugal Slovenia Spain UK		
Procedure	• **Civil**: Denmark Finland Hungary Luxembourg Slovenia Sweden UK (but less restrictive)	• **Extra**: Belgium France Portugal Germany		

Categories of disputes	• **Individual only**: Belgium France Italy Luxembourg UK	• **Individual and collective**: Austria Germany Greece Portugal Slovenia Spain Sweden	• **Collective only**: Denmark Finland	• **Social security**: Belgium Italy Slovenia Spain Hungary
Peaceful settlement	• **Requirement to start court** proceedings: Denmark Finland Italy Spain Sweden	• **Before actual hearing**: Belgium Denmark France Germany Slovenia Spain Sweden	• **Throughout the procedure**: Denmark Germany Italy Sweden UK	
Representation organisations	• **Yes** : Austria Belgium Denmark France Germany Italy(proxy) Spain Sweden UK	• **No**: Portugal (except special cases) Finland		
Enforcement	• **Provisionally**: Austria Belgium Germany (by law)	• **Suspended by appeal:** Belgium UK	• **After a certain time-limit:** Denmark	• **Immediately**: Finland France Italy Luxembourg (on pay)
Costs	• **Lower court fees:** Denmark Finland Germany Portugal Slovenia Greece	• **No court fees**: France Hungary - employees Spain UK	• **Each party own costs**: Denmark Germany	• **Legal aid:** Finland Germany Hungary

Austria	
Specialised courts	Yes, integrated in the civil system
Creation	
Composition first instance	• Three members: • One professional judge • Two lay judges
Appointment of members	• Most elected by interest bodies of the employees and employers • Some appointed by the responsible authorities
Lay judges	Appointed for 5 years, renewable, in all three instances
Training given to lay judges	Not demanded by the statute but they receive it from the proposing body
Procedure	
Individual disputes	Disputes between worker and employer
Collective disputes	• By the works council: including against dismissal of a worker (only if works council does not act, may the worker concerned lodge a complaint) • Complaint by the works council on the (non-) existence of a right, where at least three workers of the enterprise are involved (to avoid individual complaints) • Complaints by trade unions and employers on rights, on labour law
Prior peaceful settlement	Incentives proposed by the judge in first instance at the beginning of the trial
Representation	In first instance not mandatory; possible by a lawyer, trade union, works council and other "suitable person" (to be declared "suitable" by the judge)
Costs	Court fees (+); the losing party has to pay the court fees and the lawyer's fees of the other party (or a proportional distribution of these fees); not in first + second instance for complaints by works councils, especially dismissal, and between trade unions and employer organisations
Instances	• Courts of federal provinces • Higher regional courts • Supreme Court
Enforcement	Judgements are provisionally enforceable: • Dismissal • Wages
Time	
Specificities	One separate labour court of first instance in Vienna

Belgium	
Specialised courts	Yes, integrated in the civil system
Creation	By law – 1967 in force since 1970
Composition first instance	Three members: • One career magistrate = chair • Two lay judges
Appointment of members	• Professional judge appointed via the usual procedures • Lay judges: drawn from representatives of employees, self-employed and employers
Lay judges	• Appointed for 5 years, renewable • In the first + second instance • During the performing of the judge duties = suspension of the employment contract • Receive attendance fees
Training given	None
Procedure	• Specific labour law procedure • Begin with unilateral “requête”
Individual disputes	• Individual contracts of employment • Allowance for industrial accidents or occupational illnesses • Social security • Workplace health and safety committees • Administrative fiscal sanctions • Works council
Collective disputes	No
Prior peaceful settlement	Attempt at conciliation in the labour procedure is mandatory
Representation	By the corresponding representative organisation
Costs	
Instances	• Tribunal du travail – appeal • Cour du travail – pourvois de cassation • Chambres sociales de la Cour de Cassation
Enforcement	Enforcement suspended by appeal and opposition to judgment Judge can enforce judgment provisionally
Time	
Specificities	Labour prosecutor: attached to each labour tribunal to represent the public interest, delivering oral or written opinions

Denmark	
Specialised courts	Yes, separated from the civil system
Creation	Labour Court Act 1973
Composition first instance	• A president • Five vice-presidents • 12 ordinary and 31 substitute lay judges
Appointment of members	By the Minister of labour: • Presidency appointed on recommendation by the ordinary judges • 6 ordinary and 14 substitute lay judges: on recommendation by private employers' organisations and public employers • 6 ordinary and 17 substitutes, on recommendation by employees' organisations
Lay judges	
Training given to lay judges	No formal training
Procedure	• The principles of procedure for normal civil cases are applicable • Evidence – orally
Individual disputes	----------
Collective disputes	• Interpretation and breach of basic agreements • Breaches of ordinary collective agreements • Disputes concerning the lawfulness of industrial action initiated with the aim of obtaining a collective agreement • The question as to whether a collective agreement exists at all
Prior peaceful settlement	• Obligatory conciliation before a conciliation committee • Labour court preparatory meetings: search for amicable solution • Encourage in almost every instance an attempt at amicable settlement
Representation	Relevant employee organisations, or an individual firm/authority which is not affiliated to an employer organisation An individual employee cannot bring a case before the labour court
Costs	Brought before court free of charge; modest fee if judgement by default or following an actual trial Each party covers its own legal costs
Instances	No appeal
Enforcement	Rules of procedural code – after expiry of fixed time-limit (normally 14 days)
Time	As quickly + at lowest possible level Urgent cases: first preliminary session within 1 week; full court session: 1 month; final decision:2-3 weeks Non-urgent cases: 6 months to 1 year
Specificities	

Finland	
Specialised courts	Yes, separated
Creation	Labour Court Act 1974
Composition first instance	Tripartite • Chairman + neutral member • Two employee members • Two employer members
Appointment of members	All members are appointed by the President of the Republic upon nomination: • Employee and employer members by the most representative respective organisation • Neutral members by the Ministry of Justice • For 3 years, renewable
Lay judges	
Training	At the beginning in procedural and practical matters by the labour court
Procedure	• Resembles the procedure in the regular courts • Informal • Main hearing – one session – oral
Individual disputes	----------
Collective disputes	Arising out of collective agreements or out of the Collective Agreement Act ; question of whether industrial action was legal
Prior peaceful settlement	If it is provided for by the collective agreement concerned
Representation	No general right of trade unions to represent
Costs	Quite moderate; public legal aid
Instances	Court of first and final instance
Enforcement	Immediately enforceable
Time	No specific provisions - no min. or max. time limits Urgent cases – a couple of days In 2000: 4 ½ months on average; rarely more than a year
Specificities	Only one labour court for the jurisdiction in the whole country

France	
Specialised courts	Yes, separated
Creation	Institutionalised in 1806 Generalised in 1979
Composition first instance	Bipartite, half of the judges from the employee side, half from the employer side
Appointment of Members	Elected for 5 years, renewable
Lay judges	In first instance only
Training	The proposing body gives special training in law and procedure (financed by public resources)
Procedure	Oral If no agreement is reached between the lay judges (3 of 4) a new hearing takes place with a fifth “juge de départage” (professional judge)
Individual disputes	Arising from the contract of employment
Collective disputes	----------
Prior peaceful settlement	Within the system of prud’hommes: Initial conciliation stage before a joint conciliation board
Representation	By a trade union representative or a lawyer, another member of the enterprise, or the worker’s spouse
Costs	No court fees
Instances	• Prud’hommes • Courts of appeal • Supreme court (Cour de cassation)
Enforcement	Some decisions are directly enforceable up to a certain amount of money or the judges can give immediately enforceable effect
Time	Legal provisions exist but are not enforced in practice
Specificities	Emergency procedure

Germany	
Specialised courts	Yes, separated
Creation	By law – 1926
Composition first instance	• Professional judges • Lay judges
Appointment of Members	• By the responsible ministry from proposed lists of the trade unions and the employers' associations • For 5 years, renewable
Lay judges	In all 3 instances
Training	The proposing body gives special training in law and procedure
Procedure	Law of labour courts – special provisions and civil procedure in addition
Individual disputes	Arising from employment between the employer and the employee
Collective disputes	• Arising from collective agreements • Regarding works councils
Prior peaceful settlement	• The first hearing at the LC: with the chairman of the chamber only to reach a settlement • Encourage an amicable settlement at all stages of the proceedings
Representation	• Secretary of a trade union or lawyer (not mandatory) • In the appeal courts + federal supreme labour court: lawyer mandatory
Costs	• Lower fees: min. 10 – max. 500 Euros; if amicable settlement: no court fees • Each party pays its own costs for a lawyer • Legal aid
Instances	• Labour court • Higher labour court • Federal supreme labour court
Enforcement	Provisionally by law even if appeal + review are still possible
Time	• First instance: 50 % in 3 months; 90 % in 6 months; depends on the different Bundesländer • Concentration on one litigation hearing • Special acceleration of the proceedings regarding dismissal • Appeal is only admissible if the value of the issue on appeal exceeds 600 Euro
Specificities	• Special procedure for cases of the "Betriebsverfassungsgesetz" (Act regulating participation of workers in the enterprise) • Interim injunction

Greece	
Specialised courts	Yes
Creation	
Composition first instance	One judge or several judges
Appointment of members	
Lay judges	----------
Training given to lay judges	
Procedure	Relatively simplified and rapid special procedure – Art. 663 Code of Civil Procedure
Individual disputes	Arising from an employment relationship
Collective disputes	Arising from a collective agreement or provisions of similar standing
Prior peaceful settlement	Yes
Representation	• In person • By a lawyer • Employers to be represented by their professional or managerial employee
Costs	A bit less costly than civil litigation
Instances	• Appeal • Review
Enforcement	
Time	
Specificities	

Hungary	
Specialised courts	Separated labour courts
Creation	In 1972
Composition first instance	Three members: • One professional judge • Two lay judges
Appointment of members	• Elected by the general assembly of the county self-government • Nominated in the first place by the trade unions and employer org. • In practice, most lay judges are retired workers Appointed for 4 years
Lay judges	In first instance only
Training	Legal seminars + conferences
Procedure	Code of civil procedure
Individual disputes	Employment-related claims based on law or collective agreement
Collective disputes	Violation of trade union or works council rights
Prior peaceful settlement	Conciliation phase at beginning of trial
Representation	Representation by trade unions and employer organisations possible
Costs	No court fees on employees ; lawyers costs paid by losing party; legal aid; appointment of a lawyer to a party under a certain income limit
Instances	• Labour court • County court (no special chambers, but judges are specialised) • Supreme court
Time	• First trial has to be scheduled within 15 days of the lodging of the case • Cases aiming at reinstatement have priority
Specificities	The courts judge as well on: • Labour inspection • Health and safety • Social security

Italy	
Specialised courts	Yes, integrated in civil system
Creation	By law in 1928
Composition first instance	One professional judge
Appointment of members	
Lay judges	----------
Training for lay judges	Meetings + seminars
Procedure	• Speed • Immediacy • Emphasis on oral evidence • Greater power of investigation initiative in conducting the hearing vested in the judge
Individual disputes	• Private law disputes • Social insurance and social security issues • Civil servant disputes
Collective disputes	----------
Prior peaceful settlement	• Prior negotiation activity is mandatory, either in public offices or by collective contract proceedings • The judge mediates
Representation	• Lawyer • Unions on their own behalf • On behalf of their members only by specific proxy
Costs	Legal aid
Instances	• Tribunal • Specialised labour section of the court of appeal • Core di Cassazione
Enforcement	Immediately executive but suspension can be requested to the appeal judge
Time	The procedural rules can allow a trial to last (first + second instance) about one year
Specificities	Emergency procedure: Good reason to fear that, due to delays in court procedure, the right which is being defended may suffer imminent and irreparable prejudice - a speedy and effective protection

Luxembourg	
Specialised courts	Yes
Creation	1989 by law
Composition first instance	• Presiding magistrate • Two lay judges, chosen by the magistrate, one from the employer side and one from the employee side, from either white-collar workers or manual workers depending on the party of the case
Appointment of members	By the Minister for Justice on the advice of the Minister of Labour for the term of four years
Lay judges	
Procedure	• Procedure applicable to ordinary magistrates courts are followed • Injunction procedure (référé)
Individual disputes	Relating to contracts of employment that arise between employers and employees
Collective disputes	
Prior peaceful settlement	
Representation	
Costs	
Instances	• Labour tribunals are courts of last instance for small claims • Court of appeal, two specialised chambers in labour law cases
Enforcement	All judgments on pay are automatically enforceable
Time	
Specificities	• Urgent rulings: • Nullity of dismissal • Order of reinstatement • Maternity protection against dismissal • Protection against dismissal of board-level employee representatives • Protection against dismissal of employee committee members • Protection against dismissal of joint works committee members

The Netherlands	
Specialised courts	No – civil disputes connected with a contract of employment or a collective agreement come under the jurisdiction of the ordinary courts
Creation	By two general laws and several special laws
Composition first instance	Professional judges
Appointment of members	By the queen for life
Lay judges	None
Procedure	Basic and short term procedure
Individual disputes	Yes
Collective disputes	Yes
Prior peaceful settlement	No, but an experiment going on in one or two district courts During the procedure the judge can propose mediation – not compulsory
Representation	In the district court advocate needed By trade unions possible
Costs	• Generous legal aid system • Low procedural + financial thresholds • Depending on the income
Instances	• District courts (19) (with several county courts – magistrate sits alone) • Courts of appeal (5) • Supreme court
Time	in average 6 months
Specificities	If a quick decision is urgently needed a special judge can give a summary decision

Portugal	
Specialised courts	Yes, integrated in the civil system, but some parts of the country not covered
Creation	
Composition first instance	Single professional judge
Appointment of members	Elected by the superior council of magistrates
Lay judges	No
Procedure	• Code of labour procedure • Speedy • Simplified • The court may rule beyond the scope of the applicant's actual demand • Public prosecutors department has to provide legal assistance and represent employees, if they do not have a lawyer
Individual disputes	All civil and contractual disputes on issues arising from the employee's individual employment relationship, extending to associated matters such as accidents at work and occupational illnesses, social security and welfare matters and labour relations
Collective disputes	The annulment of clauses in collective agreements which are considered to contravene the law
Prior peaceful settlement	Yes
Representation	• Trade unions may attend or assist if the employee concerned does not object • Trade unions may not represent or act as substitute, except if the employee concerned has union office or is a worker representative (if no objection)
Costs	Less costly than civil litigation
Instances	• Labour court • Social division of appeal courts • Social division of supreme court
Time	4 – 12 months: first instance 2-3 year: appeal 4-5 years: supreme court

Slovenia	
Specialised courts	Yes
Creation	
Composition first instance	• Professional judges • Lay judges from employee and employer side • Individual disputes: 3 judges, 1 professional and 2 lay judges • Collective disputes: 5 judges, 1 professional and 4 lay judges
Appointment of members	Elected by the National Assembly of Slovenia • Professional judges: upon the proposal of the judicial council • Lay judges: list of candidates prepared by employees and employers respectively • For 5 years, renewable
Lay judges	Only in first instance
Training	Mainly judges with practice and knowledge in the areas of labour + social law are elected lay judges Special training at schools for judges
Procedure	• The Code of Civil procedure applies • Burden of proof often on the employer
Individual disputes	Yes
Collective disputes	Yes
Prior peaceful settlement	• Settlement hearing prior to the trial is mandatory • Mediation and arbitration are not mandatory • If arbitration is prescribed by law or a collective agreement the suit may be filed only if the prior negotiations were not successful
Representation	
Costs	• Court fees are 70% lower than those of civil litigation • Court may impose the costs of procedure on one party alone • Court may acquit one of the parties (usually the employee) of its obligation to pay court fees
Instances	• Court of first instance • High labour social court

Spain	
Specialised courts	Yes, integrated in the general system
Creation	1985, 1995 by law, Labour procedure act
Composition first instance	Only professional judges (single one)
Appointment of members	
Lay judges	----------
Training given to lay judges	
Procedure	• Greater power to the judge • Oral • Free of charge • Judge can deliver a decision orally either immediately after the hearing or within a very short period • Facilitate workers' access to the judicial system
Individual disputes	Related to the contract of employment between the employer and one or more employees
Collective disputes	Related to the contract of employment between an employer belonging to an employer association and employee representatives in the undertaking, or trade unions for interpretation of a legal rule or a collective agreement or to challenge a collective agreement clause
Prior peaceful settlement	• Prior administrative conciliation action is mandatory for labour claims • A judicial conciliation is tried before the hearing of the trial • Settlement by conciliation is enforceable as judicial decision
Representation	Representatives are authorised to intervene Trade unions on their own behalf regarding collective disputes + representing their members in individual disputes
Costs	• Free of charge • Free assistance by a lawyer "de oficio"; free expert advice
Instances	• Labour court • Labour court chambers in the higher courts of justice • Social chamber in the supreme court
Time	Social court: 3 months on average First appeal: 6 months or longer
Specificities	Social security disputes

Sweden	
Specialised courts	Yes
Creation	1929
Composition first instance	Seven members: • Two professional judges • One civil servant with special insight into labour market • Two lay judges from each side of the social partners
Appointment of members	Lay judges: recommendation by the social partners + appointed by Gov.
Lay judges	14 members for 3 years, renewable; 13 appointed by the principle organisations in the labour market; 14th member appointed without specific mandate (representative for the state as employer)
Training	None
Procedure	• Lodged by trade unions, employer org. or employer bound by a collective agreement • Same judicial process as general courts
Individual disputes	Disputes arising within the organised sector of the labour market
Collective disputes	Disputes arising within the organised sector of the labour market
Prior peaceful settlement	Parties have obligation to negotiate before the case is filed in court
Representation	Trade union represents its members Labour market organisations may bring cases to court concerning any number of members
Costs	Not less costly; trade union provides free legal aid and pays employer's costs caused by trial if latter wins case
Instances	No appeal
Enforcement	
Time	No specific timeframe – average 6 months
Specificities	Certain types of labour dispute may be brought directly before the labour court; other types of dispute must be brought before the ordinary county court, only the appeal is possible to a labour court in this case

United Kingdom	
Specialised courts	Yes, separated
Creation	By statute in 1972
Composition first instance	• Chair: solicitor or barrister with at least seven years' experience • Two lay members
Appointment of members	• Lay members by open competition, no longer by nomination of trade union and employer organisations • For 3 years, renewable
Lay judges	• In first instance only • Paid on fee-paid basis
Training	2 days sitting in with an experienced court 1 day training each year
Procedure	Modelled on, but generally less restrictive than, the Civil Courts • Short procedure • Informal and flexible
Individual disputes	• Claims involving employment rights derived from statute • Claims of employees for money due under contract, or damages of breach of contract of up to 25,000 pounds if the claim arises on termination of employment
Collective disputes	Dealt with to some extent by the Central Arbitration Committee + some in the employment tribunal e.g. collective redundancy consultation
Prior peaceful settlement	Parties are encouraged to seek conciliation through the offices of ACAS (Advisory Conciliation and Arbitration Service)
Representation	Representation by anyone; trade unions may represent
Enforcement	Ordinarily enforceable in the civil courts; usually not enforced if appeal pending
Costs	• No court fees • Costs are normally not awarded against the losing party
Instances	• Employment tribunal • Employment appeal tribunal • Court of appeal and House of Lords
Time	Very specific time limits apply for the presentation of claims/appeals
Specificities	No legal aid available for legal representation except in Court of appeal where there is some possibility

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