

SWEDEN

Justification and Characteristics of Entities Competent to Resolve Labour and Social Security Disputes (2004)

1. What legal and/or judicial entities or authorities in your country have jurisdiction over labour and social security disputes?

Labour disputes

The Labour Court in Sweden, established in 1929, deals with disputes relating to labour law. Every dispute concerning the relationship between an employer and an employee is regarded as a labour law dispute, including disputes relating to the interpretation and application of collective labour market agreements. Most labour law disputes are dealt with by the Labour Court as the first and final instance. However, in certain cases disputes must be first tried by the district court, with a right of appeal to the Labour Court.

Two conditions must be met for a labour dispute to be brought directly before the Labour Court. The claim must be lodged by an employer organisation or by an employee organisation or by an employer who has entered into a collective agreement on an individual basis. In addition, the case must concern a dispute arising from a collective agreement, a dispute relating to the law concerning the right to participation in decision-making (such as disputes relating to the freedom of association or the right to negotiate), a dispute between parties who are bound by a collective agreement, or a dispute relating to a place of work where a collective agreement is in force. If any of these conditions are not met the claim must be brought before the district court and any subsequent appeal will be heard before the Labour Court.

Social security disputes

Jurisdiction over social security disputes resides in the general administrative courts. The organisation consists of the County Administrative Courts as the first instance, the Administrative Courts of Appeal as the second instance and the Supreme Administrative Court as the final instance.

2.

a) If your country has labour and social security courts, are they separated or part of the general judicial system?

b) If your country has no labour and social security courts as part of the general judicial system, what, if any, means exist for resolving labour and social security disputes?

Labour disputes

The Swedish Labour Court is a special court and its judgement cannot be appealed. The Labour Court is a normal court in the sense that it is financed from public funds. Members of the court are appointed by the government. The individual parties in a dispute have no influence whatsoever over the composition of the court.

As mentioned above under 1. claims in certain types of dispute must be brought before the district court and any subsequent appeal will be heard before the Labour Court. The district courts are part of the general judicial system and the first instance of the general courts.

Social security disputes

The general administrative courts are part of the general judicial system.

3. If your country has a system of labour and social security courts, what are the structural characteristics of that system?

What are the advantages and disadvantages in your country's systems for resolving the disputes? (For example: does each judge sit alone? Are lay judges in place as decision makers; ...and so on... elaborate but do not limit your response to the above examples.)

Labour disputes

The district courts follow the process of the general courts and the Code of Judicial Procedure in the civil cases. The district courts are composed of one or three judges depending on the wish of the parties.

The Labour Court follows largely the same judicial process as the general courts. The Code of Judicial Procedure applies to the Labour Court. Normally seven members of the Labour Court constitute a quorum. Two members are appointed on recommendation from the employer organisations, and two on recommendation from the employee organisations. These four members usually have no legal training. Of the other three members, two, the Chairman and the Vice Chairman, must be legally trained and have had experience as judges. The remaining member does not have to have legal training but must possess special knowledge of the condition on the labour market. In some, more straightforward cases, the Labour Court may consist of only three members. The three-member court consists of a chairman plus one representative each for employer and employee interests. Furthermore the Chairman can decide by himself on preparatory measures, strike out or stay a case, etc., where clear procedural bars exist.

All together there are, in effect, no less than 25 members of the Labour Court. These include four chairmen, four vice-chairmen and three members with specialist experience of the labour market. Of the other members, seven represent the interests of employers and seven those of employees. – Only the chairmen are

engaged full time in the court and therefore employed by the court. Other members serve in the court on an occasional basis alongside their usual employment.

Social security disputes

Anyone who is dissatisfied with a decision concerning social security, made by a social insurance office, can appeal against it in writing to the County Administrative Court. Such a case is adjudicated by one legally qualified judge and three lay judges.

Cases decided by a County Administrative Court may be appealed to an Administrative Court of Appeal. Leave to appeal is required in order for the Administrative Court of Appeal to be able to hear an appeal from a County Administrative Court. It is the Administrative Court of Appeal by two judges that decides whether leave to appeal shall be granted or not. Leave to appeal must be allowed in three different situations. One is when there is cause to change a County Administrative Court's decision (change leave). Another is when it is important for a point of law that reconsideration should take place (precedent leave). Finally, leave to appeal must be granted if there are other extraordinary reasons to consider the case (extraordinary). Have a leave to appeal been granted the social security case is adjudicated by three legally qualified judges and two lay judges.

All social security cases decided by an Administrative Court of Appeal may be appealed to the Supreme Administrative Court. For a case to be brought before the Supreme Administrative Court, however, a leave to appeal is required. Leave to appeal can be granted by one judge. More than three judges however are not allowed to take part in decisions of such a nature. Leave to appeal is granted only if it is important for guidance in application of the law that the case is tried by the Supreme Administrative Court or if other particular reason exists, such as that the decision of the Administrative Court of Appeal is erroneous owing to gross negligence or a grave mistake. The aim of the regulation governing leave of appeal is of course to limit the number of appeals to the Supreme Administrative Court. Have a leave to appeal been granted the social security case is adjudicated by five judges.

4.

a) Are there any movements in your country to modify your country's system for resolution in labour and social security disputes?

b) If no resolution system exists in your country, do you think it is necessary to create and develop one?

c) Is there any need to modify your current system for resolution in labour and social security disputes?

There are no general discussions on reform of the system for labour and social security disputes. However, the need of lay judges in cases concerning social security in the Administrative Courts of Appeal is for the time being discussed.