

Justifications and characteristics of entities competent to resolve labour and social security disputes

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

In Spain, as well as labour courts there are labour conciliation entities, but they cannot resolve disputes and their practical importance is minor. And the disputes of the trade union elections are resolved by arbitrates designed by trade unions. Their arbitration awards can be contested in the labour courts. Apart from them, there are not any other entities to resolve labour and social security disputes but the judicial ones.

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

Spain has labour and social security courts. They are not separated from the general judicial system because the Spanish constitution institutes the principle of jurisdictional unity. However, the judges of these courts are specialized in labour and social security law. When a judge who is not in a labour court wants to be named to one of them he has to do a training course. And some judges are selected from labour professionals (lawyers, university professors, etc.)

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

There are no laymen in labour and social security courts. They have four levels.

1) The courts named “Juzgados de lo Social”. Here, the judge sits alone. There is one or more of these courts in each capital city of a province (in Spain there are 52 provinces with a total population of about 40 million) and in the other important towns. They are the instance court for most of the labour and social security disputes. Some of their decrees (not all) can be appealed to the “Tribunales Superiores de Justicia”.

2) The courts named “Tribunales Superiores de Justicia”. These are courts with more than a judge each. Decrees are taken by three judges. There is a “Tribunal Superior de Justicia” in each “comunidad autónoma” (Spain has 17 “comunidades autónomas”, with one or more provinces each one). Concerning labour and social security law, they have two kinds of jurisdictional capacity. 1) They can resolve the appeals to some of the decrees taken by the “Juzgados de lo Social”. This is not an appeal that allows an entire revaluation of the evidence evaluation taken by the “Juzgado de lo Social”. It is an extraordinary appeal. Most of the decrees of these “Tribunales Superiores de Justicia” are taken from resolving these appeals. 2) Moreover, the “Tribunales Superiores de Justicia” are the instance court for the disputes concerning trade unions, trade union freedom and collective conflicts when more than a province within a “comunidad autónoma” is involved.

The decrees of the “Tribunales Superiores de Justicia” can be appealed in the High Court.

3) One court named “Audiencia Nacional”. This is in Spanish capital (Madrid). It has three labour and social security judges. It is the instance court for the disputes concerning trade unions, trade union freedom and collective conflicts when they concern more than a “comunidad autónoma”. So, when a collective bargaining agreement is impugned, if it is provincial, the instance court is the “Juzgado de lo Social”. If it is a “comunidad autónoma” collective bargaining agreement, the instance court is the “Tribunal Superior de Justicia”. And if it is a collective bargaining

agreement that involves workers from different “comunidades autónomas”, the instance court is the “Audiencia Nacional”.

The decrees of the “Audiencia Nacional” can be appealed in the High Court.

4) The High Court, named “Tribunal Supremo”. It knows the extraordinary appeal to the decrees of the “Tribunales Superiores de Justicia” and “Audiencia Nacional”.

The judicial proceeding is characterized for orality, simplicity and quickness. Most of the disputes are resolved by the “Juzgados de lo Social”. In them a lawyer is not necessary. The complaint has minimum requirements. When the worker presents the complaint, the court arranges to a meeting. In it, the intervening parties allege orally. And evidences are done. Afterwards, the judge resolves. His decree can be appealed to the “Tribunal Superior de Justicia”. Then a lawyer is required. And the decree of the “Tribunal Superior de Justicia” resolving the appeal can be appealed to the High Court if there is another contradictory decree of a “Tribunal Superior de Justicia” or of the High Court.

For example, Aragón is a “comunidad autónoma” with a population of about 1.150.000 people. It has three provinces: Saragossa, which has six “Juzgados de lo Social”; Huesca, with one “Juzgado de lo Social” and Teruel, with one “Juzgado de lo Social”. And the “Tribunal Superior de Justicia” has four judges resolving the labour and social security disputes. When a worker is dismissed, the instance court is the “Juzgado de lo Social” and its decree can be appealed to the “Tribunal Superior de Justicia”. The decree of this court can be appealed in the high court if the appellant can find a contradictory decree of a “Tribunal Superior de Justicia” or of the High Court.

What are the advantages and disadvantages in your country’s systems for resolving the disputes?

There is a report that states that Spain is the country in the world with the most lawsuits. The Spanish judicial system, without laymen, with most of the courts with only one judge (the “Juzgados de lo Social”) and with an appeal system that does not allow an entire revaluation of the evidence, has the advantage of allowing to resolve quickly a huge number of lawsuits. In Spain it is really easy to claim to the labour and social security courts. And the judicial proceeding is oral and simple.

The disadvantages are the other face of this system: most of the lawsuits are resolved by a judge who sits alone. If some of their decrees cannot be appealed and the appeal, when it is possible, does not allow an entire revaluation of the evidence, there is a risk of inequality.

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

No, there aren’t. In fact, the system for resolution the labour and social security disputes is the model that is being followed by the rest of the jurisdictions. In Spain there are not any movements for introducing laymen in labour courts because the historical experience ha not been positive. And the simplicity and quickness of labour courts is the model for the other courts.

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

In 2000 a new civil proceeding act was promulgated. It is necessary to adapt the labour proceeding to that law. And the appeal system should be perfected.