

Answers to the Questionnaire from the Danish delegation:

Fourth Study Commission: Questionnaire for the 2006 Meeting

**Fourth Study Commission
Public and Social Law**

QUESTIONNAIRE

**DO WE NEED SPECIAL LABOUR COURT PROCEDURES AND
ALTERNATIVE DISPUTES METHODS**

This Questionnaire does not deal with settlement of collective interests i.e. between trade union and employers association to change tariffs or between works council and employer regarding new plant agreements. In most countries there exist specific procedures and institutions to handle this kind of collective disputes. The main objective of this questionnaire is the settlement of a specific points of law regarding claims of employees. This also involves the question how trade unions and statutory representative bodies may be involved in supporting this by supporting the individual employee or representing employees interest in specific procedures.

Concerning Danish Law:

Rights and duties for the parties on the labour market in Denmark follow primary from collective agreements, which under Danish law are legally binding both for the parties (organizations) who have concluded them and for members of the organizations, e.g. the individual workers and the individual employers. About 80 % to 90 % of wage earners in Denmark are members of a trade union and also a very high percentage of employers are organized. If an employer is not organized he will normally himself have concluded a collective agreement with the trade union. Further more an employer operating in Denmark who is bound by a collective agreement must comply with it in the terms and conditions he offers all workers doing work under the agreement no matter whether the individual worker is a union member or not. Being so the collective actors play a more important role in Danish labour law than the individual actors, and at the collective level the enterprise-level is of secondary importance compared to the level of the organizations.

Conflicts between the organizations or between an unorganized employer and a trade union can be brought before the Danish Labour Court which consists of 6 professional judges (5 of these are from the Supreme Court) and a number of members appointed by the main organizations on the labour market. The Labour Court inter alia deals with:

- 1) Conflicts over the interpretation of the basic agreements
between the two main organizations on the Danish labour*

market, the Confederation of Trade Unions (Landsorganisationen: LO) and the Danish Employers' Confederation (Dansk Arbejdsgiverforening: DA), and other similar basic agreements.

(As mentioned below conflicts over the interpretation of other collective agreements are settled by arbitration)

- 2) *Conflicts concerning the existence of a collective agreement.*
- 3) *All conflicts over an alleged breach of a collective agreement – both the basic agreements and all other agreements. Conflicts brought before the Court by an employers organization (or an employer) often concern strikes etc. in violation of the peace obligation following from the agreement, while conflicts brought before the Court by the trade unions normally concern the employers non-payment of wages, bonus etc. or disrespect of other benefits following from the agreement. The Labour Court can inter alia impose a fine (in Danish: bod) upon workers, an employer or an organization for having violated the agreement.*

There is in Denmark almost no legislation on collective labour law issues, and no general employment legislation covering individual contracts of employment for all categories of workers. There is, however, legislation for specific group of employees, notably the Salaried Employees Act. There are also statute laws covering specific issues, such as the Work Environment Act, the Equal Pay Act, the Equal Treatment Act, and so on. Conflicts arising from such acts or from individual employment contracts fall outside the scope of the Danish Labour Court and are handled by the ordinary courts.

The following answers cover mainly disputes brought before the Danish Labour Court.

I - Are there new initiatives to make Labour Court hearings more efficient?

Answer: For the time being: No

1. Are there any pre-trial procedures ?
 - a. Are they mandatory ?
 - b. In which way is the court involved ?
 - c. How long may they go on ?
 - d. Who has to bear legal cost ?
 - e. Which effect do they have on the time of prescription ?

Answers: It follows from the basic collective agreements that the parties have an obligation to participate in a joint meeting before going to The Danish Labour Court in case of an alleged breach of a collective agreement – both the basic agreement itself or any other collective agreement. The plaintiff can demand the

joint meeting to take place within 7 days. The main organizations are normally heading the meeting and the reconciliation rate is very high. If the plaintiff brings a case before the Court without having summoned the joint meeting the Court will dismiss the case. If the defendant does not cooperate in the holding of the joint meeting he will be fined for having violated the agreement. Each party is normally responsible for their own costs. There are no specific provisions about the effect of pre-trial procedures on the time of prescription.

Conflicts concerning unfair dismissal have according to most collective agreements to be brought before a complaints board with a judge (often from the Supreme Court) as the chairman of the board. The procedures of these boards facilitate a quick decision-making and the decision of the board is final.

Conflicts concerning the interpretation of collective agreements are settled by arbitration. This is mandatory, and a standard grievance procedure for the handling of conflicts by industrial arbitration has to be used if the aggrieved parties have not agreed to adequate litigates provisions.

2. Are there specific ideas to give assistance to the plaintiff to raise his claim more effectively?

Answer: claims of the employees will always be brought before The Danish Labour Court by the trade union.

If a case falls outside the scope of The Labour Court the trade union can with the consent of an employee proceed on his or her behalf against the employer before the ordinary courts.

3. What interest has to be paid for remunerations, which are not paid at the date of maturity ?

Answer: By law the interest rate is 7 percent above the basic interest rate of The Danish National Bank and has to be paid since the moment the remuneration is due.

4. Are there procedural regulations for mediation

- a. Is mediation compulsory ?
- b. How are the mediators selected ? In which way is the court involved ? Are judges different from trial judges ?
- c. Is it confidential ?
- d. How long may mediation go on? How is it finished ?
- e. Who has to bear the legal cost ?
- f. Which effect does mediation has on the time of prescription ?
- f. What training in law and procedure is given to mediators ?

Answers: There are no procedural regulations for mediation and no specific

provisions about the effect of mediation on the time of prescription.

Re mediation in general in civil cases the following can be mentioned: The Permanent Preparatory Committee concerning The Administration of Justice Act has recently been asked of the Minister of Justice to prepare an amendment of the Act concerning the implementation of a permanent and general system of mediation in civil cases. Previous mediation has been exercised in an experimental stage over a period of nearly 2 years by 4 city courts, including The City Court of Copenhagen, and by the Western High Court. The experiment has been prolonged, while the Committee is considering the necessary amendments of the Act. The cases fitted for mediation – inter alia cases concerning individual employment contracts - are being picked by the courts with the consent of the parties, and the parties can choose their mediator from a group of judges and practising lawyers, who have had specialised mediation training. Rules of professional conduct for the mediators, who participate in the experiment, have been described in a memorandum from the Ministry of Justice. The fees to the mediators have been paid by the State, while the parties normally have been responsible for their own costs unless a party has been granted legal aid.

For the time being the Court Administration Board offers interested judges an education on court mediation and the Danish Bar and Law Society offers interested lawyers an education in mediation. These courses pass over 3-4 month. The Faculty of Law on the University of Copenhagen offers a master in mediation and conflict resolution as a research-based supplementary degree course. It is a multidisciplinary course that appeals to mature students with relevant professional experience who want to equip themselves for the role of facilitating third party. The entry requirements are at least 2 years of relevant professional experience combined with a degree from an institution of higher education, a completed medium-length course of higher education or a bachelor's degree. The course is part time over 2 years, allowing participants to have a full-time job. The Danish Centre for Conflict Resolution offers different types of courses in conflict resolution and mediation.

II - Collective (class) action.

1. What kind of collective actions have You got ?
2. Who are the Parties of these procedures ?
3. Which courts are competent ?
4. Which effects has their decision ?
5. To whom is this decision binding ?
6. Is it possible for a works council or trade union to sue or request for ascertainment of rights or legal relations, if some employees are involved? Do they have to specify these employees?
7. Who has to bear the cost ?

Answers: As already mentioned the parties in cases brought before The Danish Labour Court are always a trade union against an employers organization or – if the employer is unorganized – the employer himself. Each party bears his own costs in all proceedings before the Labour Court and the Courts Decisions are binding not only to the organizations but also to the members of the organizations.

For the time being there are no procedural regulations for collective actions before the ordinary courts concerning claims of employees.

The Permanent Preparatory Committee concerning the Administration of Justice Act has recently proposed an amendment of the Act concerning the possibilities in general of having class actions brought before the ordinary courts.

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