

## Labour court system in France <sup>1</sup>

### **Preliminary : diversity of judicial process in France**

In France, social law litigations are dealt with by several jurisdictions. This is a consequence of the diversity of the French court system, based on the following ideas :

#### **Constitutional review**

- The French Constitution states that the compliance of new laws with the Constitution and constitutional principles may be checked by a specialized court : the Conseil constitutionnel (Constitutional council), which is seized by a minimum number of members of Parliament (“députés” or “sénateurs”). Thus this court is given a competence within labour law matters, and can strike down laws or require that they should be interpreted in a certain way. For instance the Constitutional court had to state about redundancy procedures or moral harassment laws, and to define some notions or rules of evidence. It was said, in the field of collective agreements, that the law could not authorize local agreements to gainst wider ones in public order matters.

#### **Judicial and administrative courts**

- The separation of powers (executive and judicial) leads to the coexistence of two jurisdictional systems : the judiciary order and the administrative justice order. The first one knows of litigations between individuals (natural persons or artificial persons, companies, associations) the second is cognizant of conflicts related to the exercise of the public power (ministries, public authorities, public administrative services). This is the reason why the authorization to dismiss a union representative or a workforce delegate given to an employer by the labour inspectorate can be contested before the administrative court.

#### **Right to appellate and hierarchy of jurisdictions**

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<sup>1</sup> Contribution of Mr Michel BLATMAN, Conseiller à la Chambre sociale de la Cour de Cassation française (social chamber of the French supreme court) (June 2006)

\* **The right to a second degree of jurisdiction being generally recognized, both judicial and administrative orders have their own hierarchical system. The original jurisdiction in the administrative order is named “tribunal administratif”. Appeals against its rulings are brought before the “cour administrative d’appel”.**

In the judicial system, petitions against first level jurisdictions are filed before the “cour d’appel”. Appeal administrative court and appeal judicial court are allowed to try entirely the case as a matter of facts and of law.

\* **At the top of either system is a supreme court, whose function is to unify the case-law, to bring out new norms and to check the compliance of rulings with the law. But as the administrative “Conseil d’Etat” can judge facts, the judicial “Cour de cassation” only judges as a matter of law and proceedings.**

### **Inside the judicial court system : a distinction is made between courts of general jurisdiction and courts of limited jurisdiction**

The first level “Tribunal de grande instance” deals with any matter that is not specially ascribed to another jurisdiction. As to the “cour d’appel” (appellate court), it can hear any case judged by an original jurisdiction (if the law allows such a review).

In the field of labour law, individual litigations are, at the first level, brought before an industrial tribunal named “conseil de prud’hommes” Appeals, when permitted, are lodged before the “cour d’appel”. Then, appeals against the latter are filed before the Cour de cassation.

But when the financial interest of the case is low, appeal can be brought directly from the conseil de prud’hommes to the Cour de cassation, by a leapfrog system.

### **The criminal system distinguishes prosecution, investigation and judgment.**

The bodies who realize these functions are different : prosecutors and judges have not the same statute : judges are independent and must be impartial. For a fair trial’s sake, the investigating justices may not sit in the cases they prepared.

### **Legal proceedings have a common core but also variations**

The ordinary civil proceedings are ruled by the “code de procédure civile” (civil procedure code). But some matters and specialized jurisdictions are submitted to special rules consistent with them. **Commercial cases dealt by “tribunal de commerce” (commercial court), social security cases dealt with by “tribunal des affaires de sécurité sociale” (social security affairs court), or tenant law cases dealt with by “tribunal**

paritaire des baux ruraux” (Joint Rural Leaseholds Court) are not always submitted to the same rules as to the organization of the courts and to ways of proceeding..

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Outline :

§1 *Common features and diversity of courts dealing with social law*

§2 *Specificity of the “Conseil de prud’hommes” (industrial tribunal or first level labour court)*

## **§1 COMMON FEATURES AND DIVERSITY OF COURTS DEALING WITH SOCIAL LAW**

Outline :

A) *Various types of courts*

B) *Professional judges and lay-judges*

### **A VARIOUS TYPES OF COURTS**

Outline :

1. Individual labour disputes : *compétence of the “conseil de prud’hommes”*

2. Collective labour litigations : *compétence of the ordinary civil jurisdiction* 3. Punitive aspects of labour law : *competence of criminal courts*

4. Interferences between labour law and law of failing firms : *competence of commercial courts*

### **1 INDIVIDUAL LABOUR DISPUTES**

At present, individual labour disputes are, in their majority, related to the termination of the labour contract or relationship ( resignation, dismissal, redundancy, lapse of fixed-term contract, constructive dismissal, etc.).

They also touch claims for wages or incidentals (job classification, bonus, paid leaves, overtime), execution or annulment of covenant of non-competition, etc.)

Their solution is put in the hands of *specialized jurisdictions*, original as to their organization and functioning : the “Conseils de prud’hommes” (Council of “wisemen”).

## 2 COLLECTIVE LABOUR DISPUTES

Disputes affecting *collective* labour relationships are, as a matter of principle, dealt with by the ordinary civil court (tribunal de grande instance). But the *tribunal d'instance* is also cognizant of litigations concerning the *elections* of employees' representatives.

### a) The "Tribunal de Grande Instance"

#### (1) Its different formations

- Panel of judges
- Judge in chambers ("juge des référés")
- President of the Tribunal stating over a

petition

#### (2) Its fields of intervention

The most frequent intervention of the ordinary civil court occurs in the following fields:

- (a) Social plans (see : collective redundancies) ;
- (b) Interprétation of collective agreements ;
- (c) Functioning of institutions representative of the workforce (Work council ; Health and safety committee ;
- (d) Disputes about strike

### b) The "Tribunal d'instance"

The judge of the tribunal d'instance is judge of the *electoral litigations*. In particular, he checks the candidacies and the regularity of the elections..

## 3 COMPETENCE OF CRIMINAL COURTS

French labour law also present punitive aspects. Many provisions of the labour code are punished with fines or even jail.

### a) The criminal courts

- Examining or investigating justice ("juge d'instruction" and, on appeal, "chambre de l'instruction")

- Tribunal de police (~ magistrate's court) :deals with "contraventions" = police offence, petty offence
- Tribunal correctionnel : deals with "délits" = more important offences
- Cour d'assises (deals with major or violent crimes such as murders, assassinations, etc)

#### b) **Nature of infractions**

- (1) Hindrance to workers' representative functions
- (2) Several illegal practises :
  - \* Illegal work
  - \* Infringement to security
  - \* Breach to hours of work
  - \* Racial discrimination
  - \* Sexual or moral harassment, etc.

### 4 **COMPETENCE OF THE COMMERCIAL COURT**

Commercial jurisdictions deal with conflicts connected to the commercial activity of business (relationships between merchants, life, difficulties, transmission and death of undertakings or companies, acts or deeds of commerce, stock exchange operations, unfair competition)

The court-appointed receiver and the insolvency judge may grant leave to declare redundancies, where such measures become for economic reasons "urgent, inevitable and indispensable" during the observation period, or where the recovery plan provides for redundancies on economic grounds.

### 5 **THE TRIBUNAL OF SOCIAL SECURITY AFFAIRS**

This tribunal deals with the *general litigations* of social security (by opposition with the technical ones) :

- \* Disputes between Social Security offices and persons paying social contributions about : social security benefits, family allowances or benefits, medical

rest, undue benefits, disability pensions, retirement benefits, reality of an accident at work) ; between employer and employee (industrial accident and occupational disease ; accident or disease caused by an unforgivable malpractice of the employer)

- \* Disputes between the collecting organisms and the employers related to social security contributions.

- \* Litigations between agencies and paramedics (valuation of medical acts, contestation of medical invoices's value).

## **6 THE TRIBUNAL PARITAIRE DES BAUX RURAUX :**

This Joint Rural Leaseholds Court deals with conflicts between landlords and lessees.

### **B. PROFESSIONAL AND NON-PROFESSIONAL JUDGES**

In France, there is a variety in court compositions.

- 1) Professional judges only :
  - Tribunal de grande instance
  - Tribunal d'instance
  - Cour d'appel
  - Cour de Cassation

- 2) Professional judges and lay-magistrates together

This system is named "échevinage" or "mixité" (mixity)

It is comprised of a panel of lay-magistrates presided by a professional judge.

\* **Tribunal des Affaires de Sécurité Sociale** : A panel composed of 1 professional judge and 2 lay-assessors (one representative of employees and one representative of employers)

\* **Tribunal paritaire des Baux Ruraux** : 1 président (judge), 2 landlords assessors and 2 lessees assessors.

- 3) Non-professional judges only

[It was the case with the Commercial court (3 lay-judges) - but this system is being reformed.]

The "Conseil de Prud'hommes" (first level Labour court) is composed of 4 lay-judges.

The introduction of professional judges occurs only

- \* at the stage of "departition" when there is split vote;
- \* then at the appellate level

### **C. ELECTIVE JUSTICE :**

Unlike professional judges, the members of labour courts, commercial courts, and Joint Rural Leaseholds Courts are elected by their peers

The members of **labour courts** are elected every 5 years. They are re-eligible.

Electorate : employers and employees, registered on the poll lists of the town where they have their professional activity

Age of eligibility : 21

Votations by separated constituencies : proportional ballot

These general elections mean for unions a test of their representativity among the labour place.

#### D. **APPLICATION OF CIVIL PROCEDURE RULES** (save for particular adaptations)

##### - Application of the general principles of legal process :

Principle of contradiction  
 Judge's neutrality and impartiality  
 Rules related to the instance  
 Directions  
 Emergency interim proceedings  
 Avenues for redress

##### - Oral proceedings

Conseil de Prud'hommes :	article L.516-6 of labour code
Tribunal de Commerce :	article 871 of New Code of civil procedure
TASS :	art. R.142-20 of Social security code
Tribunal Paritaire :	art.843 du NCP

#### §2 **SPECIFICITY OF THE "CONSEIL DE PRUD'HOMMES" (labour court)**

Created by a law (18. 03.1806) as an industrial tribunal, on a special request made to Napoleon when he visited Lyon, the "Conseil de prud'hommes" was an ancient conciliation board by means of which Lyon's

silk manufacturers (“les soyeux”) and their staff (“les canuts”) settled their disputes without the intervention of any professional judge. It had been suppressed during the Revolution. This labour court aims at first conciliation, and, if this is not reached, judgment of the cases.

Historically, this tribunal has been generalized to all the territory (271 CPH at this time), extended to all categories of employees (including executives) and become fully elected jointed lay courts. The fundamental doctrine of “paritarisme” (parity) it relies upon involves an absolute equality (footing) between employee et employer judges.

Special treats :

- Specialized jurisdiction
- Joint jurisdiction
- Conciliation justice
- Particularities in proceedings

## **A) Organization et functioning : Joint justice and Unions**

### **1) Joint justice and alternating**

#### **a) Joint and equal functioning**

The labour courts and their different panels are composed of an equal number of employees and of employers

#### **Division of work between 5 professional sections**

(Each one comprizing at least 4 employer lay-judges and 4 employee lay-judges) :

- Agriculture
- Commerce
- Industry
- Diverse activities
- Executives

#### **Sub-division of sections in chambers**

**Sub-division of sections and/or chambers in  
“bureaux”**

\* *Bureau of conciliation* (conciliation board)

It is comprized of one employer counsellor and of one employee counsellor.

\* *Bureau de jugement (ruling panel)*

It is made up of an equal number of employers and employees (comprised the chairman or the vice-chairman sitting alternatively). This number is at least 2 employers and 2 employees.

\* *Formation de référé (Emergency panel)*

The labour court may state within chambers named "formation de référé" in case of emergency or of non seriously questionable obligation for a party.

It is then composed of 2 lay judges (1 of each category).

This panel is common to all the sections of the CPH.

It is presided alternatively by a employer and employee lay-judge

**b) Alternating :**

(1) Presidency of the Conseil de Prud'hommes :

- *The president (chairman) of the CPH* is alternatively a employee or employer lay-judge

- *The vice-president (vice-chairman)* is an employer when the president is an employee, and reciprocally

- President and Vice-President are appointed for 1 year.

(2) Presidency of Section or Chamber

The president and the vice-president sit alternatively

**c) Limits to joint justice : settlement in case of split votes**

In case of split votes inside the ruling panel, the case is settled by a new panel, presided this time by a professional judge. This panel being non longer pair but uneven, a majority can be found.

**d) Problems of joint justice**

The French supreme court ruled that that though composed of members of labour organizations and unions, CPH is nonetheless independent and impartial under ECHR when it

judges some party belonging to one of these organizations or unions. The reasons of the Cour de Cassation are that : 1) binding proxy of CPH members is strictly prohibited by law and order ; 2) due to its specific composition with an equal number of elected members, there is a **balance of interests** inherent in the functioning of this jurisdiction; 3) It is possible to call for an exterior professional judge.; 4) the CPH's judgment is appealable.

(Cass. 19.12.2003, société d'HLM Mon logis vs X..., n°01-16.956 and 02-41.429)

## **2) Unions**

### **a) At the electoral level**

Candidates running for labour court elections are presented on rolls, generally backed by employee or employer Unions  
Labour elections are a test of representativity for unions.

### **b) At the level of parties's representation**

Permanent or non-permanent Union representatives may assist or stand up for parties before the labour courts.

## **B) conciliating justice**

It is CPH's first mission to conciliate parties. And this obligation is requested to be attempted preliminarily to a ruling.

This prior mission is put into Bureau of conciliation's hands. And it is in clerk's office to summon the parties.

Parties are compelled to appear in person before the conciliation board, except if they justify of legitimate reasons.

The pre-trial judge may :

- put on record a conciliation, even where partly so, of the parties.
- grant a provision on wages, damages or compensation
- order directions

## **C) PECULIARITIES OF THE LABOUR COURT PROCEEDINGS**

### **1) The seizure of the court is simplified**

The claim has just to be filed before a clerk or sent to the court  
Then the parties are summoned by the clerk's office.

### **2) Rules for appearance before the court are suppl**

= no need for a party to appear by a lawyer before the labour court

= Representation by employees or employers belonging to the same branch of industry is allowed

= Same thing with union representatives

= Husband or wife can appear to

### 3) Oral proceedings

The principle is that written procedure is not required. Parties can argue orally before the judges.

But this has the consequence that parties must appear (in person or by a representative), otherwise their written statements would not be taken into account.

### 4). Unicity of the labour instance

All claims stemming from the same contract of employment between the same parties must be subjected to an only instance (unless the grounds of the new submissions would be born or revealed after the first instance before the labour court.

This goal of this rule is to avoid the splitting and the multiplication of disputes about a same contract. In order to favour a certain peace in the business and not to divert it from its missions.

As a consequence, new claims are qualified before the court of appeal, in its social chamber.

### 5) Mission of enquiring lay-judges

Labour court counsellors can be appointed by the Office of conciliation or the judgement panel in order to gather necessary information for the judgment.

The “conseillers rapporteurs” can go inside the undertaking, hear parties or other people and get documents.

Once they have finished their investigations, they write down a report that is transmitted to the ruling panel.

They also are qualified to record the conciliation of the parties.

## 6) Provisional execution of rulings

Rulings of the conciliation office, interim orders and decisions of the ruling panel that order the delivery of certain documents or the payment of wages and notice, are immediately enforceable.

7) Appeal before the appellate jurisdiction (Cour d'appel) and before the supreme court (Cour de cassation)

### (a) Appeal before the social chamber of the court of appeal

This panel is specialised into social cases.

There is no need to appear by a lawyer or solicitor before this chamber.

Proceedings are oral.

A professional judge is commissioned for the purpose of accelerating the procedure by provoking exchanges of statements before the hearings.

### b) Petition in cassation

The social chamber of the "Cour de cassation" (french supreme regulating court) is a specialised panel of this court, only comprised of professional judges.

It deals with petitions lodged against :

- some rulings of the labour court (last resort) on account of the feeble amount of the dispute ; et des juges d'instance (contentieux de l'élection des conseillers prud'hommes ou de l'élection des instances représentatives du personnel).
- rulings of the judge (juge d'instance) stating in labour election matters.
- judgments of the social chambers of the courts of appeal

## LABOUR DISPUTES IN FRANCE

### Summary

#### Collective disputes

Disputes affecting *collective* labour relationships are dealt with by the ordinary civil court (tribunal de grande instance) only composed by professional judges. The *tribunal d'instance*, also comprised of a professional judge, is cognizant of litigations concerning the *elections* of employees' representatives.

#### Individual disputes

Created in 1806 by Napoleon, the "conseil de prud'hommes" (council of wise men) is a unique form of justice, linked with a *joint* conception of social relationships named "paritarisme" (co-management by the two sides of industry).

Easily opened to the parties, the "Conseil de prud'hommes" is a specialized first level industrial tribunal, integrated in the general judicial system and dealing with individual labour disputes. It applies the general rules of civil procedure, save some specificities such as oral proceedings and unicuity of instance.

A conciliation of parties by a conciliation office must be attempted at a preliminary stage.

Each ruling panel ("bureau") is comprised of 4 lay judges ("conseillers prud'hommes") : 2 representative of the employees and 2 representative of the employers. These lay judges are elected, on poll lists usually presentend by unions or other labour market organizations, in general elections opened to all employers and workers, voting accordingly to their category.

The entirely equal (paritary) composition of this joint tribunal requires an absolute equality between its members : judgements can only be pronounced with a majority of 3 out 4. ; the presidency of the tribunal alterns each year (one year an employer for president and an employee for vice-president, another year the reverse).

In case of "partage" (split vote by 2 against 2) a professional judge (umpire judge) is asked to complete the jurisdiction in order to settle votes.

The Conseil de prud'hommes is divided into "Sections" (themselves divided into "bureaux") dealing respectively with cases concerning different professional categories : Executives, Industry, Commerce, Agriculture, Diverse activities.

The labour court may also state within chambers (named "formation de référé"), in case of emergency or of non seriously questionable obligation for a party, and is then composed of 2 lay judges (1 of each category of course).

It is similarly composed when it has been decided by the "bureau" of conciliation or the "bureau" of judgment to make investigations before his members specially commissioned for this purpose ( "conseillers rapporteurs").

**Appeals** are brought before the Cour d'appel, Chambre sociale, composed only of professional judges.

**Appeals against cours d'appel's** decisions are lodged in the Cour de cassation, Chambre Sociale (professional judges only)

