

Helmut Zimmermann
President of the Stuttgart Labour Court

Labour Jurisdiction in the Federal Republic of Germany

- I. The constitutional mandate of the courts within the scope of the separation of powers.**
- II. The subdivision of jurisdiction**
- III. Die Untergliederung der Gerichtsbarkeiten**

III. The competence of the labour courts

IV. The structure of labour jurisdiction

V. The process of labour court proceedings¹

VI. Characteristics of labour court proceedings

VII. Statistics

¹ Translator's note Pursuant to the Industrial Tribunal Act (Arbeitsgerichtsgesetz), there are two different kinds of Labour Court procedures, "Urteil" procedures and "Beschluss" procedures. They differ in terms of the kind of decision they lead to ("Urteil" or "Beschluss"). The main difference is, however, that in "Urteil" procedures, it is the responsibility of the parties to provide the court with the necessary information and evidence needed to make a decision, while in "Beschluss" procedures, it is largely the responsibility of the court to establish the facts of the case.

The one referred to here is "Urteilsverfahren", which could be translated as 'judgement ruling/judgement proceedings'.

I. In accordance with the Basic Constitutional Law for the Federal Republic of Germany, the judicial power is one of three parallel authorities (legislature, administration and jurisdiction). It is the task of jurisdiction to practice/apply impartially apply the in each case, in order to safeguard the legal system. Jurisdiction lies solely with independent judges who work for the courts and who are subject only to the law. Special tribunals are prohibited. Everyone has the right to their “lawful” judge. The Constitution stipulates the setting up of abstract regulations that decide which court, which judicial panel and which judge is/are authorised to deal with each case². There must be at least one professional judge in each court. Only those who have obtained a university degree in law, completed a legal clerkship and then passed the second state examination for law can become professional judges.

II.

The judicial power is exercised by the constitutional court? and, on a material level, by five equal and independent jurisdiction?. There are so-called ordinary courts, administrative courts, finance courts, social courts and labour courts. Each of these judicial branches has a Federal Supreme (Federal Supreme Court, Federal Administrative Court, Federal Finance Court, Federal Social Court and Federal Labour Court). All other courts are institutions of the Federal States (Länder).

III.

The labour courts are solely responsible for disputes regarding collective bargaining law and illegal action in connection with industrial action measures and freedom of association. The majority of cases result from disputes between employees and employers or their legal successors in the employer-employee relationship, with the following circumstances: existence or non-existence of a contract of employment (for example the application for protection against dismissal³), negotiations on entering an employment contract and its continuing effects, inadmissible action in the employment relationship and employment papers.

² Translator’s note: This means that a judge cannot be chosen. Each case is assigned its ‘lawful’ judge according to the above mentioned abstract rules. Example: Judge Smith deals with all cases for a certain district, or Judge Y deals with all cases starting with the letter “D”, etc.

³ Translator’s note: an employment lawsuit, to file a suit for wrongful dismissal.

The above cases, as well as some other less significant cases which are not listed here, fall under the exclusive responsibility of the labour courts, and are dealt with in judicial proceedings. The adversarial principle⁴ governs the proceedings. This principle indicates that the circumstances forming the basis of litigation shall not be investigated ex officio, but shall be presented and proven to the court by the parties involved in the lawsuit, in a full and thorough manner.

Furthermore, the labour courts are also solely responsible for matters in connection with the Works Council Constitution Act⁵. These cases are, however, not settled through judgement proceedings but through so-called declaratory proceedings. These declaratory proceedings are based on the investigation principle. They are opened with a petition. The court investigates the circumstances relevant to the decision-making process, and takes relevant evidence, ex officio. There are no 'parties' in the declaratory proceedings, there are only 'involved persons' (usually employers and the works council). The labour court does not make a judgement ruling, it makes a declaratory ruling.

IV.

Labour jurisdiction is structured in a three-tier system. The Labour Courts of the Bundesländer are the first instance. Currently, there are 123 first instance labour courts in Germany. Every court (irrespective of its size) has a number of divisions. The division is a bench/judicial panel consisting of a professional judge as president and two lay judges representing the employers' and employees' sides, respectively. A judgment is reached through oral negotiation, and the lay judges have an equal voice to the presiding judge. In most cases, the unsuccessful party can lodge an appeal (or remonstrance in the case of a declaratory ruling), against the first-instance Labour Court's judgment with the relevant Land Labour Court.

werden. Yet, if the value of the claim the subject of the appeal does not exceed 600 Eur, the lower court must first grant leave to appeal.

Each Land has at least two Land labour courts, larger federal states might even have several. The individual panels of Land Labour Courts, as with the first-instance Labour Courts, are made up of one judge and two lay members.

⁴ ,Verhandlungsgrundsatz can be translated as ,means of proof', ,adversarial principle' or ,principle of party presentation'.

⁵ Also known as Industrial Democracy Act.

Under certain conditions, appeals on points of law can be lodged against Land Labour Court judgments, but only if such an option is explicitly stated in the judgement. These appeals, as well as judicial review applications in the case of Land Labour Court “Beschluss” procedures, are heard by the Federal Labour Court.

By law, leave to appeal must be granted if a legal issue relevant to the decision of the case is of fundamental legal significance, or if the judgment deviates from a judgment given by the Federal Court of Justice, the Joint Senate of the Supreme Federal Courts or the Federal Labour Court. If leave to appeal is not granted, a complaint of non-allowance⁶ can be filed. As third instance, the Federal Labour Court does not re-examine the appeal judgment on questions of fact, only on questions of law. Furthermore it is also responsible for the uniformity of the jurisprudence and for advanced legal training. Yet, the interpretation of law as represented by the Federal Labour Court is binding on the first and second instance courts, only with regard to the case in question. Panels at the Federal Labour Court, which is located in Erfurt, are called Senates. They are made up of three judges (one chair and two other judges) and two lay members representing the employers' and employees' sides respectively.

V.

The Federal Labour Court Act constitutes an independent code of procedure for Labour Court Proceedings. To a large extent, it refers to the general civil process order, but it also contains many regulations which allow for the characteristics of labour court proceedings. This includes first of all, the priority of the principle of oral proceedings, according to which, basically, there is no written procedure?. It also includes the immediacy principle as well as the request towards the judge, to work towards an out-of-court settlement of the dispute during all stages of the proceeding. Any first instance proceeding begins with the presiding judge summoning the parties to a conciliation hearing in order to attempt to settle the dispute amicably. In the case of disputes over the existence of a contract of employment, this hearing takes place without the lay judges being present and within two weeks after filing suit. The court can order the parties to appear in person for this.

⁶ “appeal against denial of leave to appeal”

If the conciliation hearing is unsuccessful, the case usually does not continue immediately. Instead, a separate date is set for a hearing before the judicial panel. In order to be able to settle the dispute within one hearing, the professional judge must prepare guideline rulings for this dispute hearing, which must take place in the presence of the lay judges. In this context, the judge must require the parties to submit written pleadings on time, to amend explanations and to present documents, and, if necessary, he/she must summon the witnesses the parties refer to. During the (oral) hearing before the panel and after petitions have been submitted, the presiding judge introduces the nature of the dispute and the material issues.

He/she then gives the parties the opportunity to comment. Finally, as necessary, evidence is heard. If an amicable settlement of the dispute is still not possible, the presiding judge will usually consult with the lay judges in private and then pronounce a judgement. An appeal to the Land Labour Court can be lodged against this judgement under the conditions described above, and within one month after the judgement has been delivered. Usually, the Land Labour Court decides the appeal on the basis of an oral hearing before the judicial panel. There is no conciliation hearing in the appeal procedure. As to appeals against Land Labour Court judgments, please refer to the description above. The appeal procedure is not discussed here.

VI.

The parties can represent themselves in the hearing before the labour court, there is no obligation to have a lawyer. In practice, however, more than 50% of all parties engage a lawyer or a professional representative of a trade union or an employers' association, to act on their behalf during the proceedings. In the first instance, there is only a one-time court fee which depends upon the amount in dispute, and which is not applicable in the case of an amicable settlement. Each party bears its individual legal costs outside the court () irrespective of the outcome of the hearing itself. Parties in financial need can apply for legal aid (if they can prove said need) and thus be assigned a lawyer. With regard to hearings before the Land Labour Court and the Federal Labour Court, the parties must be represented by lawyers as authorised proxies. Representatives of trade unions or employers' associations are also allowed to act as proxies before the Land Labour Court.

If a case is taken to the second and third tier, the unsuccessful party must bear the total cost of the dispute.

VII.

In the year 2004, the 127 first instance labour courts with approximately 1300 professional judges (40% of whom, I estimate, are female, and about 25% working part-time) heard a total of 590,442 complaints and 11,215 declaratory proceedings. Among the complaints, applications for protection against dismissal made up 53%. Just under 50% of all complaints were brought to a settlement in the first instance, and just over 7% were settled via a dispute judgement. About 82% of the dismissals protection cases and 77% of the other cases were brought to a conclusion within 6 months after the claim had been filed. These figures show that German labour courts work very fast and efficiently, using a procedure that is based upon the idea of mediation and the preference of mediation over contested hearings.