

**EALCJ – Annual Conference
Copenhagen (22-24 November 2018)**

Technical Questionnaire

Access to Justice in Labour Disputes

Background

The vexed issue of “access to justice” has come to the fore in recent months at the level of the European Union, with a number of “expert” consultations taking place at the initiative of the European Commission as part of the initial scoping exercise underpinning the so-called “European Social Pillar”. In that context, specific concern has been raised in respect of Article 19 TEU and Article 47 of the Charter of Fundamental Rights of Citizens.

That EU-specific concern fits alongside the broader issue of where Article 6 of the European Convention on Human Rights 1950 serves to enhance or ensure “access to justice” in respect of Council of Europe derived rights.

The focus of the technical sessions for this year’s EALCJ meeting is upon “access to justice” in relation to labour disputes. While this, to some extent, constitutes a sub-set of the more general arrangements at the EU and Council of Europe levels, there are specific challenges arising out of the personal nature of the employment relationship, including issues relating to privacy, commercial confidentiality, and aspects of “public policy”.

In order to develop a comparative overview of some of the matters arising in this context, the preparatory questionnaire presents a number of questions about the forum in which labour disputes can be determined, the procedural framework relating to litigation over such disputes, the role of the “labour judge” in this process, and a broad range of issues touching remedies and enforcement.

Your responses to these questions will be put together to produce a “Synthesis Report” for use as a basis for our discussions in Copenhagen, where the General Reporter will introduce the material compiled by way of introduction.

If you are able to furnish any supporting documents (*e.g.* Rules of Procedure, *etc.*) along with your responses, that would be much appreciated.

Many thanks!

Technical Questionnaire

ACCESS TO JUSTICE IN LABOUR DISPUTES

ACCESS TO THE LITIGATION FORUM

1. What courts are available in your country for the litigation of labour disputes?
 - Is it helpful to describe any (or all) of these as “specialist courts”?
 - Do these courts have jurisdiction in relation to both individual and collective disputes?
2. Is any form of “alternative dispute resolution (ADR)” available in your country?
 - In particular, are there any formal facilities made available in your country to provide for conciliation/mediation/arbitration of labour disputes (whether complementary to, or in place of, court processes)?
 - If so, please describe these facilities and the arrangements to which they give rise.
3. Is access to the court system in your country free of charge?
 - Is this the situation for all cases (whether or not labour disputes)?
 - In what situations, if any, will there be a requirement for payment of a fee?
4. Who can bring a case in relation to a labour dispute?
 - Can individual complainants come directly to the court?
 - Do collective organisations (trade unions or others) have any special standing or privileged status?
 - Can complainants represent themselves? If so, does this apply in every case?
 - If representatives/lawyers are used (or needed), how expensive is this, and is there provision for a party to recover legal costs?
 - Is “legal aid” available in respect of any of the costs of litigation?
5. Is there provision in any circumstances for a third-party (e.g. a representative of the State or a labour market party) to intervene in, or otherwise become party to, proceedings?
 - In particular, is there provision for the involvement of an “equality body” in relation to discrimination litigation, or a public body where payments out of public funds might be involved (as in insolvency proceedings or in the event of disputes over economic dismissals, etc.)?
6. Do time limits apply in relation to the bringing of proceedings in relation to labour disputes?
 - If so, please describe these, and indicate how strictly they are applied.
 - Is the approach to time limits in relation to labour dispute litigation the same as the approach to time limits in other forms of litigation in your country?

BRINGING A CASE TO TRIAL

7. Once a labour dispute claim has been presented, what preliminary procedures come into play?
 - Are these the same in relation to labour dispute litigation as in respect of other types of litigation in your country?
 - Do you make use of “case management” in relation to preparation of a case for trial? If so, how is this notion understood in your country?
8. What powers does the judge have in your country to strike out or restrict the litigation of “weak” or other cases?
 - What is your country’s definition (if there is one) of a “weak” case, and what test will be applied by the judge to decide whether a particular case is “weak”?
 - What powers does the judge have in your country to strike out cases during the course of the judicial procedure, and in what situations will those powers be exercised? – Does this include the conduct/behaviour of a party?
 - Is there power to prevent a party from active participation in the litigation (e.g. by reason of failing to comply with time limits for entering an appearance, or for some other reason)?
 - Can such restrictions/dismissal of proceedings be challenged? – If so, how?
9. In the process of making preparations for trial, what powers does the judge have to make “directions” or to issue various kinds of “orders”?
 - Please describe the “normal” course of events which will lead up to the trial. – Is this the same in labour dispute cases as for other kinds of litigation?
 - Who is responsible for meeting the costs of preparing documents/bundles for use at trial? – Does the judge have any power to influence this?
 - Are there rules relating to “privilege” (e.g. protected communications between a party and their legal advisor), or other rules which might prevent disclosure of particular documents or information?
 - Does the judge have the power to determine the particular mode of proceedings (e.g. whether there should be any proceedings held behind closed doors, whether any evidence should not be made publicly available, or whether the identity of any party should remain undisclosed)?
 - Is there any power for the judge to determine a particular approach to the fact-finding (e.g. who is to present their evidence/case first, in what order witnesses should be heard, whether a particular issue should be heard as a “preliminary issue”, etc.)?
 - Does the judge in your country determine what principles of law should be dealt with (and how), or is responsibility for presentation of the matter retained by the parties and/or their representatives?

ANCILLARY MATTERS

10. Is it possible in your country to make special arrangements for litigants who need language assistance (e.g. provision of Court-appointed interpreters)?
 - If so, who pays for this?
 - Who is available/qualified to do this?

11. Who takes responsibility in your country for making special arrangements to accommodate litigants suffering from disability or other challenges?
 - Is this regarded as a “judicial” or an “administrative” function/responsibility?
12. If a litigant (or a witness) is in employment at the time of litigation (and particularly if they are in a job with an employer other than the respondent employer party to a case), are there provisions which can be made to facilitate time-off work (with or without pay) to take part in the judicial proceedings and/or for related purposes?
 - If so, what influence can be exercised by the judge in such circumstances, and what flexibility is there to depart from “normal practice” in general litigation?
13. Are there provisions in the law of your country to combat “victimisation” against individuals who take action by way of litigation or who attempt to utilise other forms of access to employment rights?
 - If so, do these apply to all cases (e.g. not only in “discrimination cases” or in relation to “health and safety cases”, where this might be required under the provisions of an EU Directive or other instrument)?

“EFFECTIVE” REMEDIES

14. What is the mechanism in relation to labour dispute litigation in your country for enforcing monetary awards made by the court?

What is the mechanism in relation to labour dispute litigation in your country for enforcing awards requiring an employer to take a worker back into employment?

What mechanisms are available to enforce the proper observance of other orders made by the court in the course of labour dispute litigation?

 - Do these enforcement mechanisms reflect the normal approach in your country to litigation other than over labour disputes?
15. Are there powers for the judge in your country to make awards of “costs” in labour dispute proceedings?
 - Is this the same as would be the “general rule” in your country for legal proceedings?
16. What provision is there in your country for appeal, review, or other challenge to a decision reached by the court in labour dispute litigation?
 - Is publicly-funded legal aid available for a party in relation to appeal/review proceedings?
 - Is there any mechanism or arrangement for “pro bono” representation in labour dispute litigation?
 - If so, is this available for first instance proceedings and/or on appeal?

[In particular, is there any arrangement to ensure that when legal issues of principle are argued and determined there is proper/adequate technical legal representation available to assist the court?]

AND FINALLY ...

17. Is there any feature of the arrangements in your country for labour dispute litigation which is of particular note or interest and which has not been covered by the information provided above?