

**Tenth Meeting of European Labour Court Judges
Stockholm, September 2, 2002**

**Lay Judges
Questionnaire**

GERMANY

**General Reporter: Judge Peter Clark Employment Appeal Tribunal,
London, Great Britain**

**National Reporter: Judge Friedrich Hauck,
Federal Labour Court**

- 1 Does your Appellate Labour Court (ALC) comprise of:
- (a) a professional judge or judges only?
 - (b) lay judges only?
 - (c) the tripartite model; ie professional judge(s) plus two (or more) lay judges?

Preliminary note:

First of all we have to notice that the jurisdiction in labour matters in Germany has a three-level structure. So I think we have no “Appellate Labour Court (ALC)” in the sense of the question.

In the first instance there are the Labour Courts which are composed of one professional judge as presiding judge and two lay judges, coming from the ranks of the employers and employees (Sections 14 ff. of the Labour Court Act)

In the second instance the Regional Labour Courts have jurisdiction (Sections 33 ff. of the Labour Court Act). The Regional Labour Courts divisions also decide with one professional judge and two lay judges coming from the ranks of employers and employees.

The third instance is the Federal Labour Court in Erfurt (Sections 40 ff. of the Labour Court Act). The present ten senates of the Federal Labour Court consist of three professional judges and two lay judges coming from the ranks of employers and employees.

Every case in labour disputes has to be brought to the Labour Court of *the first instance*. The appeal (called “Berufung”) goes regularly to the Regional Labour Courts. In some cases it is possible do go directly to the Federal Labour Court (so called “Sprungrevision). Normally the appeal against the decision if the Regional Labour Court is to be brought if allowed at all - to the Federal Labour Court. So I think “Appellate Labour Courts” in the sense of the question are the Regional Labour Courts in the second instance and the Federal Labour Court in the third instance.

Comment:

In both kinds of “Appellate Labour Courts” - as mentioned above - we have a “tripartite model”:

There are professional judges (Regional Labour Courts: 1 and Federal Labour Court: deciding the cases in combination with two lay judges coming from the ranks of employers and employees respectively. .

2 What is the composition of your first instance Labour Court?

See answer to question 1. One professional judge and two lay judges, one from the side of the employers and one from the side of the employees.

3. Are there any plans or proposals currently in place to alter the composition of your ALC?

Is so, what? For how long have the present arrangements been in place?

Comment:

There are no plans or proposals current in place to alter the composition of the labour courts especially the appellate labour courts.

The present arrangements are at least in place since the Labour Court Act of 1926 is effective. But in total the idea to have labour disputes decided by special courts with the participation of representatives of employers and employees dates back to the time of French Revolution. Before the Labour Court Act of 1926 we had in Germany so-called trade and commercial Courts.

4 If lay members do sit in your court with professional judges:

(a) are there any types of appeal on which professional judges alone
(i) may or (ii) must sit without lay judges?

(b) are lay judges required to adjudicate on questions of law only, or on questions of fact/mixed law and fact as well under the terms of the ALC’s jurisdiction?

(c) can the lay members outvote the professional judge in decision making?

Comment:

Question a: In general no. In every case and appeal we have in Germany the participation of lay judges. Only in some procedural questions and a few excepted situations the professional judge(s) decide without the lay judges.

So lists - for example - Section 55 of the Labour Court Act cases in which the professional judge in the first instance decides without participation of lay judges, also the first hearing for settlement of the case in compromise

(like ACAS, but in the court) takes place without lay judges;

- In the Appellate Courts professional judge(s) decide without lay judges if the appeal is not admitted and in some cases of the procedure.

Question b:

In general: The second instance - Regional Labour Court - is responsible for questions of facts and questions of law and the lay judges decide- with the professional judges - on both questions. The third instance - Federal Labour Court - is only responsible for questions of law; so lay judges decide in this instance - like the professional judges - only on questions of law.

So in general we can say that in the second instance lay judges adjudicate on questions of facts and questions of law, in the third instance lay judges adjudicate only on questions of law.

Question c:

Every judge - either professional or lay judge - has the same vote. Lay judges have the same legal powers as the professional judges. So lay judges can outvote the professional judge in decision making where they are more in number than professional judges; especially in the first and second instance where we have one professional judge and two lay judges.

In the third instance the relation is three professional judges and two lay judges.

5 Is there any requirement that at least one lay judge sitting on the panel has particular expertise in a given type of case, eg discrimination cases (race, aex, disability)?

Comment:

No. Like the professional judges lay judges need not to have particular expertise in a given type of case.

6 Is there a policy of appointing lay judges from each of the social partners? If so, is it the practice to draw one member from each background to sit with the professional judge on each appeal?

Comment:

As said before - see question 1 - the lay judges have to come from the ranks of employers and employees respectively. This must be effective in every case and appeal.

7 How are lay judges selected for appointment; is it by open competition, recommendation by interested bodies; administrative appointment or otherwise?

Comment:

Lay judges must be chosen from proposed lists of the trade unions and the employers' associations (Section 20 of the Labour Court Act). They are appointed by the responsible authorities, ie the Federal Ministry for Labour and Social Affairs (Federal Labour Court) or - in the case of the Labour Courts and the Regional Labour Courts - by the responsible authority of the Country.

8 For what period of time are lay judges appointed? Are such terms renewable? In what circumstances, other than age or ill health may they be removed from office or their appointments not renewed?

Comment:

Lay judges are appointed for a period of five years. The appointment is renewable.

The office of the lay judge may be refused or resigned from under certain conditions, for example after the lay judge has reached the age of 65 years or in the case of illness. A lay judge can be removed from his office if he is no longer an employer or employee or in the case of gross breach of his duties as an lay judge at the request of the supreme labour authority.

9 What training in law and procedure is given to lay judges of the ALC?

Comment:

Lay judges must not have a special knowledge in law and procedure. They have to be employers or employees, former employees who are now unemployed, members of representative bodies of a legal person, managing directors, personnel managers who are authorised to hire employees for the company and need not to be trained lawyers or so. If a person is appointed to be a lay judge in one of the instances of the labour courts the proposing body gives special training in law and procedure to these persons in some extent.

10 How often do the lay judges disagree? Is it often, sometime, rarely? Do they see their role as that of independent judge or representative of 'their' side of industry?

Comment:

There are no statistics to which extent lay judges disagree. I think it is very different in the various instances and the courts. In my opinion it is sometimes.

In Germany lay judges especially in the labour jurisdiction see their role as that of an independent judge and not as a representative of "their" side of industry. Especially in the Federal Labour Court we have to see that the lay judges often are the heads of their proposing bodies and are also responsible for the policy of this body.

11 Do you perceive there to be

(a) advantages and (b) disadvantages in sitting with lay colleagues in the ALC? If so, what are they?

Comment:

I think to sit with lay members who have many experience of the world of labour is a great advantage. They can bring their experiences to make the right decision. The involvement of lay judges in all three instances plays a decisive role for the respect and confidence which labour court jurisdiction has gained among employers and employees since its existence. It also contributes a lot to the social peace we have in Germany and makes labour jurisdiction more public.

12 Overall, from your experience do you believe that the administration of justice in your ALC is improved or impaired by the presence of lay judges as opposed to professional judge(s) sitting alone? Please say why you reach your conclusion.

Comment:

I think the presence of lay judges has improved the labour jurisdiction in all three instances. To the reasons see answer to question 11 and the following arguments: The presence of lay judges makes labour jurisdiction more understandable and more “familiar” to working people. In general I think it is a democratic factor too. It is a point of control for the public of what labour jurisdiction does.