

**XXIII Meeting of European Labour Court Judges**  
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**NATIONAL REPORTS**  
**QUESTIONNAIRE 2**

**Judicial Ethics and Independence:**  
**are they threatened by social networks or political influence?**

**General Reporter: Steve Adler, President (retired), Israel National Labour Court**

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## **Belgium**

**Report by Justice Koen Mestdagh, Member of the Labour Chamber, Court of Cassation, Belgium**

### **I. The Court System in each country**

1. Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction.

The Belgian court system is undergoing a major reform as from the 1st of April 2014.

Between 1970 and the 1st of April 2014, on the 1st instance level, the country was divided in 27 districts. Each district had a Tribunal of 1st instance, a Labour Tribunal (although some districts shared the same professional judges) and a Commerce Tribunal. The Labour Tribunals have competence in matters of labour law, social security and welfare and collective debt arrangement (the latter since 2007). The Commerce Tribunals deal with civil and commercial law cases between merchants. The Tribunal of 1st instance has a residual

competence but it's main competence is civil and criminal law cases. Each district had also one or more Police Tribunals. The main competence of the Police Tribunal is traffic offenses and traffic accidents. There are also 187 justices of peace

On the appeal level, the country is divided in 5 regions. Each region has a Court of Appeal (= appeal court for judgments given by the Tribunals of 1st instance and the Commerce Tribunals) and a Labour Court (= appeal court for judgments given by the Labour Tribunals).

There is one Court of Cassation for the whole country.

Since the 1st of April 2014 the first instance level has been completely reorganized territorially. There are now 13 Tribunals of 1st instance, one per province + a Dutch and a French tribunal in Brussels and a tribunal in the small German speaking district of Eupen. The number of Labour Tribunals and Commerce tribunals is reduced to 9. In principle the territorial competence of a Labour or Commerce Tribunal is now the same as that of the Labour Court, except for the Brussels region where are now 4 Labour and Commerce Tribunals (2 Dutch speaking and 2 French speaking). The district of Eupen has also a Labour Tribunal and a Commerce Tribunal but together with the Tribunal of 1st instance they form one single court. The number of Police Tribunals is reduced to 15.

Also, please relate to the following:

a) Are the Labour Courts part of the general court system or an independent court system?

They are part of the general court system.

b) Is the administration of the Labour Courts independent of the administration of the general courts?

The administration of any court or tribunal is independent one from another. However they all have a very limited independence. Until now nearly everything is centrally managed by the administration of the Ministry of Justice.

This is going to change. The court system will become more independent from the Ministry of Justice. A College of the Bench has been created to direct the administration of the courts. The administration of all courts, except for the Court of Cassation, will depend of the College of the Bench.

c) Does the Labour Court in your country have lay members on its' panels? In all cases? Do they have an equal vote on deciding the outcome of the court's judgment? Are there lay members on the general courts?

The Labour Tribunals and the Labour Courts have indeed lay members on its' panels, in all cases except for summary proceedings and collective debt arrangement. They have equal vote in the decision.

The Commerce Tribunals have lay members on their panels as well.

## II. The Independence of the Labour Court System

### 2. How are judges appointed to the Labour Courts? Please relate to the following:

#### a) Who appoints the judges to the various instances of the Labour Courts?

Judges as well as public prosecutors are appointed by Royal Decree, under the authority of the Minister of Justice, on proposal by the High Council of Justice (hereafter: HCJ).

##### a.a) If there is a committee, who sits on the committee?

The HCJ is equally composed by judges and public prosecutors, elected by their colleagues for 4 years, and lay members, appointed by the Senate for 4 years. There are 3 categories of lay members: Bar members, law professors and others. The Nomination Committee of the HCJ is at the beginning of every period of 4 years elected amongst the members of the HCJ, with equal representation of judges/public prosecutors and lay members.

##### a.b) Are there any politicians involved in the appointment process? If so, what is their involvement?

Since the lay members of the HCJ are appointed by the Senate and every major political party can, according to their strength, choose a number of candidates, the lay members all carry a political 'label'. It's not clear whether this political affiliation plays a role in the appointment process.

#### b) What are the qualifications required for people applying to be judges of the various instances of the Labour Courts?

A master degree in law is always required. There are nowadays 3 ways of entry to the function of judge in a Labour Tribunal, each involving a different type of test:

- 1) after having passed a comparative examination, a yearly decided number of young lawyers with at least one year experience at the Bar (or in another juridical function) during the last three years before the test, can start an apprenticeship for a duration of 3 years before being eligible for an appointment as judge (the duration is only 1,5 years to be able to start as a public prosecutor);
- 2) lawyers with at least 10 uninterrupted years of experience at the Bar (or 12 years in another juridical function) have to pass a more extensive test of professional aptitude before being eligible for an appointment as judge (only 5 years of professional experience is needed for an appointment as public prosecutor);
- 3) lawyers with at least 20 years experience at the bar can be allowed an exemption from the test sub 2; if allowed they have to pass an oral evaluation test; a maximum of 12 % of judges or public prosecutors can be appointed this way.

To be able to become a judge, a public prosecutor appointed after an apprenticeship must have fulfilled his office during 5 years.

To become judge in a Labour Court, the candidate must either:

- a) have at least 15 years of experience in a juridical function, whereof the last 5 years as a judge or public prosecutor in 1st instance;
- b) have passed the test sub b and have at least 15 years experience at the Bar;
- c) have fulfilled the office of judge or public prosecutor during at least 7 years if having entered the judiciary via an apprenticeship.

To be able to become judge or advocate-general in the Court of Cassation, the candidate must have at least 15 years of experience in a juridical function, whereof the last 10 years as a judge or public prosecutor

c) Please describe the appointment process: who can apply? How does one apply?

Are there tests given? If so, what are they: written, oral, personality?

Are there interviews? If so, who does the interviewing?

Vacancies are published in the State Journal.

Anyone who fulfils the requirements explained under sub (a) and (b) can apply by sending in a registered letter to the Minister of Justice within a month of the publication.

Then a written opinion on the candidate is collected from the local Bar, the corps chief of the candidate (if he is already judge or prosecutor) and the chief of the corps where the vacancy is. For a place in a Labour Court, a Court of Appeal or the Court of Cassation the written opinion of the general assembly of that court is also collected. The candidates are usually interviewed by everyone who has to give his opinion.

The candidates have the opportunity to make their remarks on the written opinions and after that their file is send to the HCJ. Within 40 days and after having interviewed the candidates, the Nomination Committee of the HCJ presents one of them by a motivated recommendation to be nominated. The Minister of Justice has 60 days to sign the nomination decree. He can refuse the nomination of the recommended candidate but cannot chose another candidate himself. If the recommendation is refused, the HCJ has two weeks to present another candidate or represent the same. If the HCJ can't decided of if the Minister of Justice refuses the representation of the same candidate again, the vacancy is declared open again and the whole process is done all over again.

d) Are there necessary qualifications to become a judge in the various instances of the Labour Courts? Years of experience as a lawyer? Years admitted to the Bar? Languages spoken and/or understood? Are recommendations submitted? Are candidates required to take a seminar or personality tests?

No other qualifications than explained under sub (a) and (b) are required. In principle no knowledge of another language is required either.

Every judge or prosecutor belongs either to the Dutch or the French linguistic role. This is determined by the language in which you got your Master degree at university. To get

appointed in Flanders one has to belong to the Dutch linguistic role. In Wallony one has to belong to the French linguistic role. In Brussels the number of places reserved for every linguistic role is determined and if there is a vacancy it is stated in the publication in the State Journal for which linguistic role it is.

In the Brussels courts a determined number of judges and prosecutors must have proven apprehension of the other language by passing a language test. There are now two tests with a different level of difficulty.

Because they are the appeal courts for the district of Eupen, the Court of Appeal and the Labour Court of Liège must have a small number of judges and prosecutors with proven apprehension of German. One judge of the Court of Cassation also must have passed the German language test.

e) Are there different methods of appointing Labour Court judges as compared to judges of other types of courts?

No

f) If your system has more than one instance (trial, appeal, supreme) are there different methods of appointing Labour Court judges for the different instances? If so, please describe the methods.

No, the method is the same for all instances.

g) How are the Lay members appointed and who appoints them and for what length of terms?

The lay members are appointed by Royal Decree under the authority of the Minister of Labour (employees and employers) or the Minister competent for independent workers' social security regime (independent workers). They are appointed for a 5 year period. The candidates are respectively presented by the representative trade unions, employers organizations and independent workers organizations. The opinion of the president of the Labour Court is asked but this is basically just a formality. The screening is limited to a morality report received from the local police and only if the candidate has a criminal record, a negative advise is given. The HCJ is not involved in this.

### 3. How is the budget of the Labour Court determined? By who or which body?

The budget of each Court is entirely and unilaterally determined by the Ministry of Justice. Most things are centrally decided and supplied by the Ministry. The president of each Court has only two ridiculously small budgets on which he or she more or less can decide himself or herself: a budget for representation and a budget for so called "small costs". The president doesn't really have money at his or her disposal. In reality it's an account within the Ministry of Justice. The invoice of a supplier has to be certified and send to the Ministry and it's the Ministry that pays the supplier from that account, usually many months later.

All this is going to change in some respect. The framework to grant the Judiciary more management autonomy has been voted by Parliament last year. Most things still have to be worked out.

#### 4. Under what circumstances can a judge or lay member be dismissed from office and is this done in practice?

##### a) Age

Yes. When reaching the age limit (70 for the Court of Cassation, 67 for all other Courts) you have to retire. It is possible to keep on working as a substitute judge or prosecutor after retirement age but without remuneration (just a fee of 75 euro per court session is paid).

##### b) Misbehavior – are judges subject to disciplinary action, by whom

Yes. Normally it's the president of the Court who will start disciplinary action. Disciplinary action against a president of a Court is started by the president of the higher court. Thus if disciplinary action against the president of a Labour Tribunal needs to be undertaken, it's the first president of the Labour Court who should start it.

The instance competent to start disciplinary action has the competence to impose a minor sanction. Before September the 1st 2014 major sanctions were imposed by a higher instance. Thus the first chamber of the Labour Court had to decide on the dismissal of a Labour Tribunal Judge and the first chamber of the Court of Cassation had to decide on the dismissal of a Labour Court judge.

A Disciplinary Court and a Disciplinary Court of Appeal were created by Act of 15 July 2013. Since September the 1st 2014 the newly created Disciplinary Courts have the competence to impose major sanctions on all judges. The composition of the panel differs according to the type of Court the prosecuted judge belongs to.

##### c) Conflict of Interest

On itself this is not a ground for dismissal. Of course, if a judge wants to start an incompatible professional activity he or she should resign and if failing to do so, disciplinary action may lead to dismissal.

##### d) Senility, mental disease

Yes, this can be a ground for early retirement for medical reasons.

#### 5. Is there an independent body which handles public complaints against the court system, including the judges and the lay members? If so, please provide a short description of this body.

Yes, the Advise and Investigation Committee of the aforementioned HCJ handles public complaints against the court system. The HCJ has 44 members, 22 per linguistic group. The Advise and Investigation Committee has 8 members per linguistic group, 4 lay members and 4 judges/prosecutors.

a) Can the public file complaints against the judges?

Yes

6. Who decides which judges hear which each case?

Each Labour Court has several chambers and the president of the Court decides on which chamber(s) every judge will be part of. Which chamber hears which type of case is ruled by the court regulations that are approved by Royal Decree and published in the State Journal. If more than one chamber can hear a certain type of case, the judge presiding the introduction hearing will disperse those cases amongst the competent chambers, in principle at random.

a) Does any person or body outside the court have any say on which judge hears a specific case?

No

b) Who decides which lay members will sit on each panel?

The president of the Court will make a duty roster, normally per judicial year. Which lay member will sit on the panel in a specific case entirely depends on which chamber will have to take the case and the date set for the hearing.

c) Does any person or body outside the court have any say on which lay members hear a specific case?

No

7. Who decides on promotion of judges to higher courts?

The Nomination Committee of the HCJ, see part II, questions [1].

### III. Judicial Ethics, social media and court independence

8. Are there rules of judicial ethics for the general court judges and the Labour Court judges?

Yes, the HCJ in cooperation with the Advisory Board of the Judiciary (= judges and prosecutors of all instances, elected by their colleagues) have drawn up guidelines. These guidelines are based on the text approved by the European Network of Councils for the Judiciary in 2010.

a) Is there an enforcement procedure for these rules?

No

b) Is there a method whereby judges can ask for rulings about how to act or behave when they have questions about their behavior?

No

c) Are there rules of judicial ethics for the lay judges?

No

9. Are judges and lay members allowed to be active members of political parties? Run for political office? Do private work as arbitrators, mediators, attorneys?

Judges and lay members are not allowed to do private work as arbitrators, mediators or attorneys. They are allowed to be active members of political parties, but judges have a duty of reticence and therefore should keep a low profile. Judges can't run for political office. Lay members can but have to resign when they are elected.

a) Are judges and lay members allowed to participate in any fashion in political or social public demonstrations, such as marches, rallies, protests, etc.?

Yes, but judges should keep a low profile.

10. Are there limitations on the ability of judges or lay members to express themselves in public lectures? In the media? To appear on television or radio?

Yes, they can't comment on their own judgments, even if they are criticized in the media or in legal doctrine.

11. Have there been any court cases in your country regarding the independence of the Labour Courts or judicial ethics?

No

Have there been any claims by labour unions or management organizations that the Labour Courts are not independent or are influenced in any way by politicians' or political motives?

No

12. Has there ever been instances of people or bodies who have attempted to influence a judgment of your court?

No

Has there ever been "political" influence on your Labour Court system from outside your country, such as from EU, UN or ILO bodies? This does not refer to the EU court system or the European Courts, but to political influence from outside your country by international unions or employer associations, foreign embassies, international sports associations, etc.

No

#### **IV. Social Media and the Courts**

13. Are judges and lay members allowed to use the social media?

Judges are allowed to use the social media privately but need to be very careful to prevent that their independence, impartiality and integrity is not compromised.



a) Can and do judges have connections thru the use of Facebook, twitter and similar social media?

They certainly can not discuss on individual cases on the social media. I know of a couple of Google groups in which judges discuss more general topics or sometimes case related problems. To my knowledge Facebook etc. are not used for that purpose.

b) Can and do they have blogs or web pages?

Theoretically yes. There is no objection against having a blog on art, cooking, travel etc., but I have no knowledge of the existence of such blogs. I don't think a judge could make a blog on the functioning of the legal system without creating a problem, but in principle it's not forbidden.

b.1) Are there limits to the extent of personal information which judges or lay members are permitted to publish on social media? For example, can they state their private telephone number and address, spouse name and place of work, marital status, and sexual preference?

I would advise against publishing personal information on social media, but there isn't a rule forbidding it.

c) Can and do they put pictures of themselves on the social media and use social media like Facebook, Tweeter, and Instagram?

Yes

d) Can and do judges use any of the above social media forms to communicate with each other?

Professionally they can't, privately they can but I have no knowledge that they do.

e) Are there any rules governing lay members which relate to the above questions?

No

f) If the answer to any of the above questions is positive, how is it used, are there any other limitations to its use and have there been any problems with its use?

As far as I know the social media are not widely used by judges and only for communication with relatives and personal friends. I do not know of any problem caused with its use.

g) If there is a judicial code of ethics applying to judges and/or lay members, do these relate to issues arising out of the use of the social media? If so, please describe them.

A code of ethics applying to judges doesn't exist.

14. Do judges, yourself included, consider the social networks, internet or the media in general a legitimate method of learning about disputes which are being litigated before your court?

No, any information that isn't submitted by the litigating parties can not be used.

- a) Will you read a newspaper or internet article about a dispute being litigated in your court?

Yes. Most articles are published after the judgment has been given, but I won't stop reading the article when I discover it's about a pending case.

- b) May an attorney arguing a case in your court refer to information appearing in the social media, internet or the media? Will it be given any importance in your opinion?

It's not relevant for the Court of Cassation. In a Labour Court an attorney can argue as seems fit to him and thus may refer to information appearing in the media. Personally I wouldn't give any importance to such information and there is no real evidence of judgments influenced by information that has appeared in the media.

- c) May an attorney ask a witness a question on cross examination based on such information appearing in the social media, or a media article or any item published in the internet?

We don't have cross examination. Any question needs to be presented to the presiding judge you will not ask the question if he finds it irrelevant.

15. Do you feel that the social media or the social networks have any influence on the hearings or judgements of your court?

No

16. Does your country have a general rule of "sub-judice" and is it enforced?

No

- a) Does your country have laws and/or regulations regulating social media's relationship to the court system, and the labour courts in particular? If yes, please describe them?

No

- b) If there were any judgments on this subject please describe them.

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17. Has the social media influenced the transparency of your court?

No

- a) Regarding public access to information about your court?

No

b) Does your court have a site on social media? On Facebook, twitter or a similar site?

No

c) Does your court have an Internet site open to the public?

Yes

Give a brief description of the type of information the public can obtain on this site.

General information on the composition of the Court, its competence, the procedure in civil and criminal cases, a reference to the legislation concerning the Court, a lexicon, the list of abbreviations used in our judgments, a link to the database of published judgment, some announcements concerning judgments in important cases.

Go to [www.cassonline.be](http://www.cassonline.be) and you will be redirected to the site of our Court. You can also find it and the sites of the Labour Courts on [www.juridat.be](http://www.juridat.be).

What are the languages of the site?

French and Dutch

Are the judges' and lay members legal ethics published on the site?

No

Are decisions of disciplinary hearings concerning judges or lay members published on the Courts' internet site?

No

d) Does the public have access on the social media to hearings in your court?

No

e) Is it permissible to record or film hearings in a Labour Court?

No

Can the court protocol or evidence be posted on the social media?

No

f) Are there limits to what the public, judges, lay members or parties can say in the social media about Labour Court judges and/or about the way the judges conducted a hearing or court judgments?

There are no limits to what the public or parties can say in the social media. Judges and lay members should refrain from commenting decisions of their colleagues in het (social) media.

Have there been any charges of contempt of court relating to information appearing in the social media?

The offense of 'contempt of court' does not exist in Belgian law.

g) Given the open character of the social media and the difficulty to control information appearing on it, is it still possible:

1) To conduct some hearing "in closed court"?

Yes

2) To prohibit publishing of certain information revealed in a court case. For example: in cases involving sexual harassment,

No

3) To prohibit publication of the victim's name or details of the harassment.

No

18. Has the social media or internet been used to monitor judges' work and/or worktime?

No

Is the social media, especially the internet, used for purposes of setting cases and managing judges' workloads?

No

19. Have there been instances when the social media has been involved in revealing internal discussions within judicial panels? Or draft judgments prior to their being signed and delivered to the parties?

No

What steps were taken to prevent these kind of errors?

Nothing in particular.

20. are there any other issues relating to the relationship between the social media and judicial independence which you would like to mention?

No

## Finland

### Report by Ari Wirén, Vice President of the Labour Court

#### I. the Court System in each country

1. Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction.

Also, please relate to the following:

- a) Are the Labour Courts part of the general court system or an independent court system?
- b) Is the administration of the Labour Courts independent of the administration of the general courts?
- c) Does the Labour Court in your country have lay members on its' panels? In all cases? Do they have an equal vote on deciding the outcome of the court's judgment? Are there lay members on the general courts?

#### The Finnish Court System is as follows:

- \* The general courts (the Supreme Court, five Courts of Appeal and the District Courts) have general competence in civil and criminal matters
- \* The administrative courts (the Supreme Administrative Court and six Administrative Courts and the Administrative Court of the Åland Islands) have competence in administrative matters
- \* Special Courts (the Labour Court, the Market Court and the Insurance Court) are each independent of the general court system, though the judgments of the Market Court can be appealed (in some cases on basis of a leave of appeal) either to the Supreme Court or the Supreme Administrative Court, while certain decisions of the Insurance Court can be appealed to the Supreme Court.

(a) The Labour Court is an independent special court. The judgments of the Labour Court are final and they can not be appealed. There is, however, a possibility to extraordinary channels of appeal to the Supreme Court on basis of grave procedural errors. Some of these have been filed in, but none of these has been successful so far.

(b) The administration of the Labour Court is independent of the administration of the general courts.

(c) The Labour Court has a tripartite composition. As a rule the court sits in two divisions of six members. Of these members two are representants for the employees' unions and two are representants for the employers' associations. The chair and one of the other members are

neutral of labour market parties. Though there are no formal qualifications for the lay judges nearly all of them have judicial education (LL.M) and long experience in the field of labour law.

All the judges have an individual and equal vote in each case. A clear majority of the judgments are, however, decided unanimously (roughly 85 per cent).

There are still lay judges in general courts in some criminal cases (one judge and two lay judges, each with individual and equal vote).

## **II. The Independence of the Labour Court System**

2. How are judges appointed to the Labour Courts? Please relate to the following:

a) Who appoints the judges to the various instances of the Labour Courts?

a.a) If there is a committee, who sits on the committee?

a.b) Are there any politicians involved in the appointment process? If so, what is their involvement?

b) What are the qualifications required for people applying to be judges of the various instances of the Labour Courts?

c) Please describe the appointment process: who can apply? How does one apply?

Are there tests given? If so, what are they: written, oral, personality?

Are there interviews? If so, who does the interviewing?

d) Are there necessary qualifications to become a judge in the various instances of the Labour Courts? Years of experience as a lawyer? Years admitted to the Bar? Languages spoken and/or understood? Are recommendations submitted? Are candidates required to take a seminar or personality tests?

e) Are there different methods of appointing Labour Court judges as compared to judges of other types of courts?

f) If your system has more than one instance (trial, appeal, supreme) are there different methods of appointing Labour Court judges for the different instances? If so, please describe the methods.

g) How are the Lay members appointed and who appoints them and for what length of terms?

### **[2] The Independence of the Labour Court System**

(a) The chairs of the Labour Court (President of the Labour Court and Labour Court Judge) are appointed by the President of the Republic of Finland on proposals of the Finnish Judicial Appointments Board. The members of the board consist of nine judges, one public prosecutor, one advocate and one person representing the research and teaching of law. The

Finnish government is included in the appointment proceedings as all the appointments of Finnish judges (and all other decisions of the President of Finland) must be made with the presence of whole of our government. In fact there is virtually no interference by the government after the proposal by the Judicial Appointments Board.

(b) Qualifications required are the same as for all Finnish judges according to our Constitution and section 11, Act on Judicial Appointments. You must be a righteous Finnish citizen, have a Master's degree in law, have knowledge of both our national languages (Finnish and Swedish) and professional competence based on previous experience in a court of law or elsewhere, preferably also in the field of Labour Law. The President of the Labour Court must have leadership skills, as well.

(c) Applications must be made in writing. Nowadays most of applications are submitted by e-mail. Tests are given for the highest positions as a judge, like the President of the Labour Court, normally personality tests. Interviews are done for almost all higher positions of the judiciary like the candidates for Vice President of the Labour Court, who have been interviewed by the President of the Labour Court. Even the Judicial Appointments Board can do interviews of the candidates.

(d) See answers to (b) and (c). Normally no recommendations are submitted, but the Board takes in statements from the Chief Judges of the Courts where the applicants have served. The President of the Labour Court issues the opinion of the Labour Court.

(e) No.

(f) There is only one instance of labour courts in Finland.

(g) Other (part-time) members of the Labour Court are appointed by the President of the Republic of Finland on proposal of the central labour market parties for a period of three years (section 2, Act on the Labour Court).

### 3. How is the budget of the Labour Court determined? By who or which body?

The budget of the Labour Court is a part of the Finnish state budget. The budget is determined through yearly negotiations between the Ministry of Justice and the President of the Labour Court.

The yearly wages of the personnel are normally determined through collective agreements between the Judges' Union and the Ministry of Justice. The yearly rent for the premises is decided by the landlord (a state-owned limited company).

4. Under what circumstances can a judge or lay member be dismissed from office and is this done in practice?

a) Age

b) Misbehavior – are judges subject to disciplinary action, by whom

c) Conflict of Interest

d) Senility, mental disease

[4] (a) All the judges have the same obligation as other civil servants to resign at the age of 68 according to section 35, Law on Civil Servants and Public Employees.

(b) A judge can be suspended from his office by a decision of a higher court according to section 40, para 2 and section 46 para 3 while criminal proceedings against him or her are pending or if the security of citizens could be in danger.

(c) If there is a conflict of interest, a judge is deemed biased, and can not hear the case. The chairs of The Labour Court must be neutral, so a conflict of interest should not occur.

(d) Judges must resign if they are found senile or mentally ill. Even in cases of other incapability of handling the office as a judge he/she can be removed from his/her office by a decision of a higher court according to section 46, para 2, Law on Civil Servants and Public Employees. So far, this has happened only once (see Judgment of the Finnish Supreme Court in case SC 2005:34).

5. Is there an independent body which handles public complaints against the court system, including the judges and the lay members? If so, please provide a short description of this body.

a) Can the public file complaints against the judges?

[5] The Finnish Parliamentary Ombudsman and the Chancellor of Justice are the two independent bodies which handle public complaints against the whole of the court system. Everyone can file in a complaint against any judge. If the complaint proves successful, both the Ombudsman and the Chancellor of Justice can bring criminal charges against the judge or order a public prosecutor to open a criminal case against the judge in question. In minor cases they can also give official admonitions "reprimands". They can also give recommendations for the development of legislation.



## 6. Who decides which judge hears which case?

- a) Does any person or body outside the court have any say on which judge hears a specific case?
- b) Who decides which lay members will sit on each panel?
- c) Does any person or body outside the court have any say on which lay members hear a specific case?

[6] The chair in each case is decided by the President of the Labour Court (in the order that the statements of claim have been submitted to the court; 1st case to the President, 2nd case to the Labour Court Judge and so on; and cases which have something in common to the chair whom the first of these cases was delivered to).

(a) No, none whatsoever.

(b) The court secretariat on the basis of a system of rotation. Lay members are invited to every panel separately. Possible bias and the nature of the case (Collective agreements in the private sector or in the public sector) are normally the only factors which can give cause to make an exception of the order of rotation.

(c) No, none whatsoever.

## 7. Who decides on promotion of judges to higher courts?

[7] There is only one Labour Court in Finland

## III. Judicial Ethics, social media and court independence

### 8. Are there rules of judicial ethics for the general court judges and the Labour Court judges?

- a) Is there an enforcement procedure for these rules?
- b) Is there a method whereby judges can ask for rulings about how to act or behave when they have questions about their behavior?
- c) Are there rules of judicial ethics for the lay judges?

[8] There is a set of recommendations published by the Finnish Judges' Union (Suomen Tuomariliitto); Ethical Principles for Judges. These Principles (published in Finnish, Swedish, French and English) are a set of non-binding recommendations.

(a) The principles are only recommendations, there is no enforcement of them.

(b) No.

(c) No.

9. Are judges and lay members allowed to be active members of political parties? Run for political office? Do private work as arbitrators, mediators, attorneys?

a) Are judges and lay members allowed to participate in any fashion in political or social public demonstrations, such as marches, rallies, protests, etc.?

[9] Yes, judges and lay members are allowed to be active members of political parties and run for political offices. There is a freedom of association also for judges. Some Finnish District Court judges have been members of the Finnish Parliament, but during their mandate periods they have had to set temporarily aside their offices as judges. The separation of powers must be upheld.

Judges can do private work as arbitrators, but they must get permission from the court in question (or the Supreme Court). At the beginning of October 2015 the legislation will change so it is not possible for a judge to act as an arbitrator for one of the parties in question. Nor is it possible to work as an attorney and simultaneously to hold an office as a judge.

(a) Yes these actions are normally counted as use of freedom of expression, even for judges and lay members of the court. There are, however, situations where there is risk of bias (e.g. in connection with industrial actions).

10. Are there limitations on the ability of judges or lay members to express themselves in public lectures? In the media? To appear on television or radio?

[10] No, there is a general freedom of expression, even for judges and lay members of the court provided that no confidential information can be expressed.

It is not deemed suitable for the judge to explain the underlying reasons of any judgment he/she has handed out. The judgments of the court must be properly written. Any further later explanations on the matter are not allowed.

11. Have there been any court cases in your country regarding the independence of the Labour Courts or judicial ethics?

Have there been any claims by labour unions or management organizations that the Labour Courts are not independent or are influenced in any way by politicians' or political motives?

[11] No

None so far.

12. Has there ever been instances of people or bodies who have attempted to influence a judgment of your court?

Has there ever been "political" influence on your Labour Court system from outside your country, such as from EU, UN or ILO bodies? This does not refer to the EU court system or the European Courts, but to political influence from outside your country by international unions or employer associations, foreign embassies, international sports associations, etc.

[12] No; discussions arise from time to time in the media, but they have been within freedom of expression.

No, no influence whatsoever.

#### **IV. Social Media and the Courts**

13. Are judges and lay members allowed to use the social media?

a) Can and do judges have connections thru the use of Facebook, twitter and similar social media?

b) Can and do they have blogs or web pages?

Are there limits to the extent of personal information which judges or lay members are permitted to publish on social media? For example, can they state their private telephone number and address, spouse name and place of work, marital status, and sexual preference?

c) Can and do they put pictures of themselves on the social media and use social media like Facebook, Tweeter, and Instagram?

d) Can and do judges use any of the above social media forms to communicate with each other?

e) Are there any rules governing lay members which relate to the above questions?

f) If the answer to any of the above questions is positive, how is it used, are there any other limitations to its use and have there been any problems with its use?

g) If there is a judicial code of ethics applying to judges and/or lay members, do these relate to issues arising out of the use of the social media? If so, please describe them.

[13] See [9]. There is a general freedom of expression and freedom of information, even for judges and lay members of the court. No confidential information can be expressed.

(a) Some judges have these kind of connections.

(b) Yes, they can, but they haven't had any.

(c) Yes, they can.

(d) See infra.

(e) We don't have any information of this.

(f) None so far. See reply to [7].

14. Do judges, yourself included, consider the social networks, internet or the media in general a legitimate method of learning about disputes which are being litigated before your court?

- a) Will you read a newspaper or internet article about a dispute being litigated in your court?
- b) May an attorney arguing a case in your court refer to information appearing in the social media, internet or the media? Will it be given any importance in your opinion?
- c) May an attorney ask a witness a question on cross examination based on such information appearing in the social media, or a media article or any item published in the internet?

[14] Judges do not normally read articles of pending cases that are being litigated before them. Afterwards it is quite natural, and also acceptable to read articles about your own judgments.

(a) See infra.

(b) If the information in question has any relevance in the case, it can be admitted as evidence (see chapter 17 section 7 Code of Civil Procedure.

Any questions can be asked provided with that they are relevant in the case and that the theme of questioning has been determined by the parties before the main hearing.

15. Do you feel that the social media or the social networks have any influence on the hearings or judgements of your court?

[15] No, no influence so far.

16. Does your country have a general rule of "sub-judice" and is it enforced?

- a) Does your country have laws and/or regulations regulating social media's relationship to the court system, and the labour courts in particular? If yes, please describe them?
- b) If there were any judgments on this subject please describe them.

[16] There are no general rules of sub judice. The media is allowed to report any court proceedings while a matter is under trial. The general freedom of expression and freedom of information are applicable. No judgments on this subject are to be found.

17. Has the social media influenced the transparency of your court?

- a) Regarding public access to information about your court?
- b) Does your court have a site on social media? On Facebook, twitter or a similar site?
- c) Does your court have an Internet site open to the public?

Give a brief description of the type of information the public can obtain on this site.

What are the languages of the site?

Are the judges' and lay members legal ethics published on the site?

Are decisions of disciplinary hearings concerning judges or lay members published on the Courts' internet site?

d) Does the public have access on the social media to hearings in your court?

e) Is it permissible to record or film hearings in a Labour Court?

Can the court protocol or evidence be posted on the social media?

f) Are there limits to what the public, judges, lay members or parties can say in the social media about Labour Court judges and/or about the way the judges conducted a hearing or court judgments?

Have there been any charges of contempt of court relating to information appearing in the social media?

g) Given the open character of the social media and the difficulty to control information appearing on it, is it still possible:

1) To conduct some hearing "in closed court"?

2) To prohibit publishing of certain information revealed in a court case. For example: in cases involving sexual harassment,

3) To prohibit publication of the victim's name or details of the harassment.

[17]

(a) No.

(b) No.

(c) Yes. All our judgments are published on the website. The languages of the site are Finnish, Swedish and English. Judgments given in Swedish are published in Swedish while judgments given in Finnish are published in Finnish. There is some information of the members and other staff of the Labour Court, the adress, phone number and telefax number of the court. There are links to legislation and to Collective Agreements.

The judges' and lay members legal ethics are not published on the Internet site of the Court. See [7] infra.

There have been no disciplinary hearings concerning judges or lay members that could have been published on the Labour Court's internet site.

The Internet adress of the Finnish Labour Court's site is  
<http://www.tyotuomioistuini.fi/fi/index.html>

(d) No.

(e) Yes, if the recording does not disturb the proceedings in question. The hearings are normally open to the public and unless no confidential information is dealt with during the hearing (in camera) the recordings are free for everyone to put on the net.

(f) See [9] and [12] and Principle 15 of the Ethical Principles for Judges, the recommendations mentioned in [7].

(g) Yes, yes and yes. The names of the persons in question are always anonymised in the case reports published on our website, as well.

18. Has the social media or internet been used to monitor judges' work and/or worktime?

Is the social media, especially the internet, used for purposes of setting cases and managing judges' workloads?

[18]

No.

No.

19. Have there been instances when the social media has been involved in revealing internal discussions within judicial panels? Or draft judgments prior to their being signed and delivered to the parties?

What steps were taken to prevent these kind of errors?

[19]

None so far. The members of our panels are taught from the very beginning to understand the great importance of confidentiality of the discussions within our panels. The members frequently return all the confidential papers to the Labour Court to be destroyed.

20. Are there any other issues relating to the relationship between the social media and judicial independence which you would like to mention?

[20]

None so far.

## Germany

**Report by Dr. Mario Eylert, Vorsitzender Richter am Bundesarbeitsgericht;  
Dr. hc. Reinhard Schinz, Vorsitzender Richter am Landesarbeitsgericht**

### I. 1. a)

The German constitution provides that the Labour Courts are one of the five independent branches of courts (the others being Ordinary Courts [civil and criminal], Administrative Courts, Social Courts [matters of social insurance], and Finance Courts [tax matters]). Therefore the Labour Courts are not part of the ordinary civil courts. Above these five branches there is the Constitutional Court which is not a supreme court of appeal but can hear appeals against decisions by any court of the five branches claiming a breach of the constitution by that decision.

There are three instances: the (local) Labour Courts, the Higher Labour Courts (courts of appeal on facts and points of law, mostly one in each federal state) and the Federal Court (appeals on point of law).

### b)

Yes, in very nearly all cases. They have an equal vote. Both in the Labour and in the Higher Labour Court the chambers consist of 1 professional (presiding) judge and 2 lay judges, 1 from either side. In the Federal Court the senates consist of 3 professional judges and 2 lay judges. There are lay members in the administrative courts, the social courts, the criminal courts and the chambers for commercial matters of the ordinary civil courts.

### II. 2. a)

The professional judges in each instance are elected by parliamentary committees.

Judges of the 1<sup>st</sup> and 2<sup>nd</sup> instance (state judges) are elected by the judicial committee of the state parliament. Usually they consist of members of the state parliament, lawyers and judges (each group elected by their peers), whereas federal judges are elected by a federal committee consisting of the 16 state ministers in charge of the labour courts and 16 elected members of the federal parliament (Bundestag). The appointment of state judges is proposed to the judicial committee by the state minister in charge of the labour courts. The committee can either accept or refuse the proposal by secret ballot and relative majority, not elect a judge of their own choice. Federal labour court judges are proposed by the minister for labour in consultation with the minister for justice.

Elected judges are formally appointed by the prime minister of the federal state (state judges) or the Federal President (federal judges).

Traditionally, the members of the federal election committee (both ministers and MPs) either belong to the conservative/liberal fraction or the labour/green fraction. In practice, deals are done between the fractions, especially if court presidents or judges of the constitutional court are to be appointed.

The presidents of the courts concerned and an elected body of judges are consulted before an appointment. However, their recommendation is not binding to minister or the election committee.

b)

Professional judges in all instances have to be qualified lawyers (1<sup>st</sup> and 2<sup>nd</sup> state exam). In practice, only candidates with top marks are acceptable.

By constitutional law appointments and promotions depend on suitability, ability and performance. For promotions these are evaluated and reported by the court president in regular intervals (5 years). However, these reports may not interfere with the principle of judicial independence. This can be a tightrope walk for any president. The quality of judicial work may neither be measured according to the president own understanding of right or wrong, nor according to the judge's rate of "success" or "failure" in a higher instance.

In practice it has been known that promotion, especially to a federal court, was not entirely decided upon by merit but by either proven or suspected political inclination of the candidate.

d)

For appointment at the labour court anyone fulfilling the formal requirement (2 state exams) can apply.

For promotion to the Higher Labour Court in principle any judge at a local labour court can apply. However, before being considered by the president to be suitable for promotion in practice the judge has to be "tried" at the Higher Labour Court for 6 – 12 months although this is not a legal requirement. The assessment of this trial period is often crucial for the chances of promotion.

For federal courts formal applications are not required. However, if a state judge formally applies to be a federal judge and some other judge is appointed, he or she can file a competition complaint claiming that he or she was the better qualified candidate or that the appointment procedure had been faulty. In practice a number of such complaints have been successful.

e)

There are no hiring tests. Before a first appointment there are usually interviews conducted either by the president or the ministry.

f)

The only formal qualification is the 2 state exams. No experience as a lawyer is needed (however, in practice some suitable work experience is often considered helpful). The same applies to languages. No seminars or personality tests. The tenure is 5 years, reappointment possible.



g)

No formal difference. However, work experience is considered to be advantageous.

h)

See b)

i)

Lay members are appointed by the ministry according to suggestions submitted by the relevant collective organisations (employers' associations, trade unions).

2

The court's budget is part of the ministry's budget. For each budget, the court president has to specify the court's financial needs and justify the planned expenses to the ministry. The ministry passes these requirements on to the finance minister who after close scrutiny will propose the (state or federal) budget to parliament which will decide on the budget.

3

German Judges Act:

#### **Section 21** **Dismissal from service**

(1) A judge shall be dismissed

1. where he loses his status of being a German in terms of Article 116 of the Basic Law,
2. where, except as otherwise provided by statute, he enters the service of, or takes up office with, another public employer, or
3. where he is appointed a professional soldier or a soldier serving for a specified term.

In cases under number 2 the highest service authority concerned can, with the agreement of the new service employer and with the consent of the judge, direct that judicial tenure shall continue in addition to the new service position or office held.

(2) A judge shall be dismissed

1. where he refuses to take the judicial oath (section 38),
2. where at the time of his appointment he was a member of the German Bundestag or of a *Land* parliament and did not resign his parliamentary seat within the reasonable time-limit set by the highest service authority concerned,
3. where he was appointed after reaching retirement age,

4. where he requests his own dismissal in writing,
5. where he has reached retirement age or is unfit for service and the service relationship has not ended in his retirement, or
6. where he takes up abode or permanent residence abroad without the consent of the highest service authority.

(3) In the absence of his own written consent a judge for life or for a specified term can only be dismissed on the strength of a judicial decision that has entered into final and binding effect. Dismissal pursuant to subsection (1) of a judge for life or for a specified term can only be alleged after a court declaration having final and binding effect.

## **Section 22**

### **Dismissal of a judge on probation**

(1) A judge on probation can be dismissed on expiry of six, twelve, eighteen or twenty-four months following his appointment.

(2) A judge on probation can be dismissed on expiry of the third or fourth year

1. where he is not suited to hold judicial office, or
2. where a judicial selection committee refuses to give him judicial tenure for life or for a specified term.

(3) A judge on probation can in addition be dismissed where he has conducted himself in a manner which would lead, in the case of a judge for life, to a disciplinary measure impossible in formal disciplinary proceedings.

(4) The time-limits stipulated in subsections (1) and (2) shall be extended to cover any period of unpaid leave.

(5) In the cases under subsections (1) and (2) the judge shall be notified of the dismissal order at least six weeks before the day of dismissal.

## **Section 23**

### **Dismissal of a judge by commission**

The provisions concerning termination of probationary judicial tenure apply *mutatis mutandis* to the termination of judicial tenure by commission.

## **Section 24**

### **Termination of service by judicial decision**

Where judgment is given against a judge by a German court within the area of application of this Act imposing

1. a sentence of at least one year's imprisonment for a criminal offence committed with intent,
2. a sentence of imprisonment for a criminal offence committed with intent and punishable in accordance with the provisions concerning the ban on wars of aggression, high treason, jeopardy to the democratic constitutional state or concerning espionage and jeopardy to external security,
3. disqualification from holding public office, or
4. forfeiture of a basic right under Article 18 of the Basic Law,

Judicial tenure shall cease upon entry into final and binding effect of such judgment without any need for a further judicial decision.

Lay judges can only be dismissed by court order and only under the condition that they have grossly neglected their duties as lay judges.

a

Compulsory retirement age: 65 (to be raised to 67).

b

Judges are independent, bound only by the law. This is guaranteed by the constitution.

Material independence means that nobody who is not a member of the body deciding the case may direct, influence or advise the judge on how to decide.

Personal independence means that no judge can be dismissed or posted against his/her will by court administration or ministry.

Disciplinary action may only be taken if the misdemeanour is outside the privileged judicial independence and only by court decision.

Outside the privileged judicial independence the judge is subject to supervision by the president or the ministry. This concerns e.g. punctuality or observing legal provisions on the period within which a judgement has to be delivered.

Example for disciplinary action: A judge at a local civil court in Bavaria was active in a forbidden Nazi organisation in Brandenburg. When the interior secret service reported his activities to the Bavarian authorities they prepared charges against him with the aim of removing him from his office. The judge resigned prior to a court decision.

c

Judges are excluded by law from acting as a judge in a case if they are party to the case themselves, if they are related to a party, if they have given evidence in the case, if they have acted as judge in this case in a lower instance.

A judge can be challenged because of prejudice. The challenge is decided upon by another judge.

d

Disease can be a reason for forced early retirement. The decision is made by a court after medical examination.

4.

There is no special body or authority to handle public complaints. However, such a complaint may be lodged with the court president.

Complaints against judges' handling of a case will be dismissed on account of judicial independence. Parties complaining will be referred to appeals procedures.

5.

In Germany there is the constitutional principle of the right to a lawful judge. The law provides which court has jurisdiction. Within the court an elected body of judges (presidium) decides in abstract terms how cases are distributed to the judges.

a

There is no way the president or any outsider can decide which judge hears which case.

b

The lay judges are distributed in the same way as the professional judges. The presidium decides which chamber or senate they are allocated to, an abstract system provides which cases they hear.

c

This cannot be influenced by an outsider.

6.

See 2 b and d.

7.

There are no specific legal regulations on judges' ethics. There have been public debates, however, such rules are widely regarded as contravening the principle of judicial independence.

8.

Judges may be members of political parties. They may run for political office. However, if they are elected, the judicial tenure is seized by virtue of the law.

#### Judge's act Section 36

##### Membership of a parliamentary body or government

(1) Where a judge consents to his nomination as a candidate for the election to the German Bundestag or to the legislative body of a Land he shall, on application being made, be granted unpaid leave, being necessary in preparation for his election, during the last two months before election day.

(2) Where a judge accepts election to the German Bundestag or to the legislative body of a Land or where the judge is appointed, with his own consent, a member of the Federal Government or of the government of a Land, the right and the duty to hold judicial office shall cease without a court decision and in accordance with specific statutory provision.

Whilst in office judges may not act as attorneys. They may do so after retirement with certain restrictions.

Judges may act as arbitrators or mediators with the president's permission provided that such activities will not interfere with their judicial duties. Labour court judges frequently act as chairperson in arbitration councils provided by law in conflicts between employers and works councils.

a

Yes, within reason, both in general political and specific occupational matters.

9

#### Judge's Act Section 39

##### Maintenance of independence

In and outside office a judge shall conduct himself, in relation also to political activity, in such a manner that confidence in his independence will not be endangered.

Both the Federal Administrative Court and the Federal Constitutional Court held that judges enjoy the constitutional freedom of speech but have to respect their constitutional role in the manner of expressing their views. Therefore they must not misuse their status whilst exercising their freedom of speech. It is considered unacceptable if judges demonstrate for general political purposes wearing their official robes.

10

Some few cases. The most notorious might have been a case where an employee had been dismissed without notice because he claimed in public that his employer – a large chemical plant – had been able to blackmail the state government by threatening collective dismissals if measures to protect the environment would be rigorously pursued. The judge hearing the

case was active in the civil service union which had been criticising the employer's policies and had publicly demanded an amnesty for demonstrators against a new airport runway. The employer challenged the judge because of prejudice. At the end the Federal Constitutional Court held that the judge had been within his constitutional rights and that there had not been objective grounds to suspect prejudice from the judge's activities.

11

We have not experienced any direct attempts to influence our decisions.

However, in certain – fundamental – cases there is “public litigation” – a certain amount of pressure by publications both in the general press and in law journals. It is quite common that professors or lawyers are asked to publish some “expert” opinion before some important case comes up for a decision. As far as we can say this is largely futile and wasted expenses.

Not in the labour courts. Apparently there has been some pressure on criminal courts when it came to cases involving Libyan, Syrian or Iranian authorities in terrorist acts.

IV

12

Yes.

a

They may, we don't.

b

Very few judges do. One colleague seem to feel the need to advertise his publications and his cv.

The general rules apply (see above)

c

Yes, if they feel this way inclined. We don't.

d

Possibly. No facts known. Rules see above.

e

There have been some few cases of unsuitable pictures of a judge posted by himself. If the requirements are fulfilled disciplinary action might be taken.

f

There are no specific rules for social media.

13

Only official press statements by the court are considered legitimate before a court hearing. The hearing itself and the judgement may be and is often subject to media reports both in conventional and in social media.

a

Yes, with great pleasure, because the media mostly get it completely wrong. The reports quite often have no resemblance to the actual facts of the case and the journalists or other authors don't understand the finer points of the law.

b

An attorney may in principle refer to anything he or she chooses. We have never experienced that media reports make any impression on the judges, not even the lay judges.

In principle an attorney may base a question to a witness on any source of information. However, the question has to be relevant to the case and the subject of the evidence.

14

Not really. However, one might conduct a hearing somewhat more formally if there was a lot of media presence or interest in the social media. We cannot imagine though that the fear of a media "shitstorm" would have any influence on the decision. However, we know of a colleague for whom a widely criticised decision and the following shitstorm in the media (and by some prominent politicians) turned out to be a burden.

15

no

a

no

b

not known

16

a

wikipedia has a link to facebook for the Federal Labour court.

b

no

c

yes

General information in German about the court, decisions, press statements, assignment of cases, information about proceedings. Rules on ethics are not mentioned. Disciplinary decisions are not published.

d  
no

e  
no, expressly forbidden by law. However, the rules are under revision.

No protocol or evidence may be posted.

f  
no

Contempt of court is not a legal concept in German proceedings.

g  
1  
Yes, proceedings in camera are admissible under certain conditions (protection of young people, state or private secrets if they have precedence over the principle of a public hearing.

2  
The court has no power to prevent such publication. However, persons violated by such publications can seek a court order or damages.

3  
see 2

17  
no

no

18  
not known

no steps taken

19



see above

\*\*\*\*\*

### **German version of the Report:**

**By: Vorsitzender Richter am Bundesarbeitsgericht Dr. Mario Eylert,  
Vorsitzender Richter am Landesarbeitsgericht Dr. hc. Reinhard Schinz**

## **I. The Court System in each country**

[1] Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction.

Also, please relate to the following:

- (a) Are the Labour Courts part of the general court system or an independent court system?

*Mit der Gründung der Bundesrepublik Deutschland durch das Grundgesetz (GG) im Mai 1949 fiel zugleich die verfassungsrechtliche Entscheidung für eine eigenständige Arbeitsgerichtsbarkeit. Das GG sieht in seinem Art. 95 Abs. 1 GG ein Rechtssystem mit mehreren selbständigen Zweigen, ua. einer selbständigen Arbeitsgerichtsbarkeit, vor; es bestimmt weiter, dass für jeden Zweig ein oberster Gerichtshof des Bundes zu errichten ist. Damit ist die Arbeitsgerichtsbarkeit eigenständig und – insbesondere – nicht Teil der Zivilgerichtsbarkeit. Umgesetzt wurde der grundgesetzliche/ verfassungsrechtliche Auftrag erstmals mit dem im Oktober 1953 in Kraft getretenen Arbeitsgerichtsgesetz (ArbGG). Die Arbeitsgerichtsbarkeit ist dreistufig aufgebaut. Sie besteht aus den Arbeitsgerichten, den Landesarbeitsgerichten und dem Bundesarbeitsgericht.*

- (b) Is the administration of the Labour Courts independent of the administration of the general courts?

*Yes - independent*

- (c) Does the Labour Court in your country have lay members on its' panels? In all cases? Do they have an equal vote on deciding the outcome of the court's judgment? Are there lay members on the general courts?

*Die in den Bundesländern errichteten Arbeitsgerichte bestehen aus Kammern, in denen (ein) Berufsrichter als Vorsitzender und je ein ehrenamtlicher Richter aus Kreisen der Arbeitgeber und der Arbeitnehmer als Beisitzer tätig sind (§ 16 Abs. 2 ArbGG).*

*Die Landesarbeitsgerichte entscheiden ebenfalls durch Kammern in der Besetzung mit einem Vorsitzenden und je einem ehrenamtlichen Richter aus Kreisen der Arbeitnehmer und Arbeitgeber (§ 35 Abs. 2 ArbGG).*

*In der dritten und letzten Instanz entscheidet das Bundesarbeitsgericht in der Besetzung mit drei Berufsrichtern und je einem ehrenamtlichen Richter aus Kreisen der Arbeitnehmer und Arbeitgeber (§ 41 Abs. 2 iVm. Abs. 1 ArbGG).*

*Die ehrenamtlichen Richter wirken an den gerichtlichen Entscheidungen mit gleichem Stimmrecht wie die Berufsrichter mit (one man – one vote).*

## **II. The Independence of the Labour Court System**

[2] How are judges appointed to the Labour Courts? Please relate to the following:

(a) Who appoints the judges to the various instances of the Labour Courts?

If there is a committee, who sits on the committee?

Are there any politicians involved in the appointment process? If so, what is their involvement?

*Die Berufsrichter des **Bundesarbeitsgerichts** werden auf Lebenszeit berufen. Sie müssen die Befähigung zum Richteramt (§ 5 DRiG) besitzen und das 35. Lebensjahr vollendet haben. Über ihre Berufung entscheiden die Bundesministerin für Arbeit und Soziales im Benehmen mit dem Bundesminister der Justiz gemeinsam mit dem Richterwahlausschuss (siehe Richterwahlgesetz (im Folgenden: RiWG), §§ 2 ff). Sie werden nach ihrer Wahl vom Bundespräsidenten ernannt (Art. 95 Abs. 2 GG iVm. § 42 ArbGG). Dem Richterwahlausschuss des Bundes gehören bei der Wahl der Bundesarbeitsrichter die 16 für die Arbeitsgerichtsbarkeit zuständigen Minister der Länder kraft Amtes sowie weitere 16 Mitglieder an, die der deutsche Bundestag nach den Regeln der Verhältniswahl beruft. Bei den Sitzungen des Richterwahlausschusses führt die Bundesministerin für Arbeit und Soziales den Vorsitz; sie hat aber kein Stimmrecht.*

*Die Stellen der Bundesrichter werden weder öffentlich noch innerhalb der Arbeitsgerichtsbarkeit ausgeschrieben. Eine Bewerbung ist nicht möglich. Nur die Bundesministerin für Arbeit und Soziales sowie jedes Mitglied des Richterwahlausschusses hat das Recht, Vorschläge zu machen (§ 10 RiWG).*

*Der Präsidialrat des Bundesarbeitsgerichts, ein gewähltes Vertretungsorgan der Richterschaft des Bundesarbeitsgerichts, gibt eine Stellungnahme zur persönlichen und fachlichen Eignung aller vorgeschlagenen Kandidaten ab. Der Richterwahlausschuss ist aber an die Stellungnahme des Präsidialrats nicht gebunden.*

*Der Richterwahlausschuss entscheidet in geheimer Abstimmung mit Mehrheit (§ 12 RiWG).*

*Vergleichbare Regeln gelten auch für die Ernennung der Richter in 1. und 2. Instanz aufgrund der entsprechenden landesrechtlichen Regelungen in den einzelnen Bundesländern (§§ 18 ArbGG für die Arbeitsrichter, § 36 für die Richter am Landesarbeitsgericht).*

(b) What are the qualifications required for people applying to be judges of the various instances of the Labour Courts?

*Alle Berufsrichter (= Vorsitzende einer Kammer des Arbeitsgerichts oder des Landesarbeitsgerichts) müssen ua. die Befähigung zum Richteramt besitzen (= erfolgreicher Abschluss von zwei Staatsexamen im Fach Rechtswissenschaft), §§ 9, 5 ArbGG.*

*Anders als frühere Regelungen verlangt das ArbGG heute von Arbeitsrichtern nicht mehr, dass sie „besondere Kenntnisse und Erfahrungen auf dem Gebiet des Arbeitsrechts und des Arbeitslebens haben.“*

*Es gilt aber für alle Personalmaßnahmen für Richter Art. 33 Abs. 2 GG als Maßstab, nach dem*

*„ jeder Deutsche nach seiner Eignung, Befähigung und fachlichen Leistung gleichen Zugang zu jedem öffentlichen Amt hat.“*

*Damit kommt es sowohl für Einstellungen als auch für Beförderungen von Richtern auf deren „Eignung, Befähigung und fachliche Leistung“ an.*

*In bestehenden Richterhältnissen werden diese aufgrund von „dienstlichen Beurteilungen“, die der jeweilige Präsident/in des Landesarbeitsgerichts (oder bei Bundesrichtern die Präsidentin des BAG) erstellt, ermittelt und festgestellt. Diese Beurteilungen werden für sachgerechte Personalentscheidungen als unverzichtbar angesehen. Sie sind zulässig und verstoßen nicht gegen die richterliche Unabhängigkeit.*

*Die dienstlichen Beurteilungen sind das „Nadelöhr“ und das „Einfallstor für den Dienstherrn“ bei personalpolitischen Entscheidungen. Problematisch ist, was bewertet werden kann und wie es bewertet wird. Aussagekräftig ist eine Beurteilung nur, wenn sie sich auch über spezifische juristische Kenntnisse und Fähigkeiten des Richters äußert. Allerdings darf auf den Richter kein Einfluss genommen werden, wie er bestimmte Fälle zu entscheiden hat; auch indirekte und psychologische Einflussnahmen sind unzulässig. Es entsteht deshalb immer wieder Streit, welche Äußerungen in Beurteilungen im Einzelfall zulässig sind.*

*Als zulässig gehalten werden Äußerungen, dass die Leistung des Richters jedenfalls in quantitativer Hinsicht nur am unteren Durchschnitt der Anforderungen sind, sein Arbeitspensum nicht zu befriedigen vermag, der Richter sitzungsreife Sachen ohne erkennbaren Grund länger liegen lasse oder die Urteile des Richters durch eingehendere Würdigung des Parteivorbringens an Überzeugungskraft gewinnen würden bzw. der Richter ein nicht übersehbares problematisches Sozialverhalten an den Tag lege und unübersehbare Persönlichkeitsdefizite aufweise.*

*Für unzulässig gehalten wurden hingegen Beurteilungen über die zu häufigen Abänderungen von Entscheidungen des Richters durch das Rechtsmittelgericht oder den Hinweis, dass im Vordergrund seiner Erörterungen der Sach- und Rechtslage meist das Bemühen stehe, einer gerichtlichen Entscheidung aus dem Weg zu gehen und er zu dem der Anregung nicht nachgekommen sei, einen weiteren Sitzungstag in der Woche abzuhalten.*

(c) Please describe the appointment process: who can apply? How does one apply?

*Siehe oben, am Beispiel der Bundesrichterwahl.*

Are there tests given? If so, what are they: written, oral, personality?

Are there interviews? If so, who does the interviewing?

*Es gibt keine speziellen "Einstellungstests".*

*Zur Beurteilungspraxis, s.o., Ziff. 2 b*

*Allerdings finden oft "interviews" (Einstellungsgespräche) vor einer erstmaligen Ernennung/Einstellung statt. Das Interview führt – in den Bundesländern unterschiedlich – entweder der Präsident/die Präsidentin des Landesarbeitsgericht oder die maßgebliche Landesverwaltung (Minister für Arbeit und Soziales oder Minister für Justiz)*

(d) Are there necessary qualifications to become a judge in the various instances of the Labour Courts? Years of experience as a lawyer? Years admitted to the Bar? Languages spoken and/or understood? Are recommendations submitted? Are candidates required to take a seminar or personality tests?

*Basis sind die zwei Staatsexamen für die erste Ernennung an das Arbeitsgericht. Dafür bedarf es einer gewissen Qualität der Staatsexamen ("guten Noten"). Andere Qualifikationen (Tätigkeit an einer Universität, Promotion, bisherige Berufstätigkeiten o.ä.) spielen für die Ersteinstellung nur eine geringe Rolle. Eine vorherige Berufstätigkeit – insbesondere als Anwalt – ist nicht erforderlich. Fremdsprachenkenntnisse sind nicht erforderlich ("Gerichtssprache ist deutsch"), werden aber gerne gesehen.*

*Weitergehende Persönlichkeitstests werden nicht verlangt oder durchgeführt.*

(e) Are there different methods of appointing Labour Court judges as compared to judges of other types of courts?

*Ja, in gewisser Hinsicht.*

*Eine vorherige berufliche Tätigkeit – ob in einem juristischen oder einem anderen Beruf – wird bei der Einstellung als Arbeitsrichter gerne gesehen, ist aber keine Voraussetzung für eine Ernennung.*

(f) If your system has more than one instance (trial, appeal, supreme) are there different methods of appointing Labour Court judges for the different instances? If so, please describe the methods.

*Im Prinzip nicht.*

*Das Verfahren – siehe oben – ist vergleichbar ausgestaltet. Für eine Ernennung zum Vorsitzenden Richter am Landesarbeitsgericht, zum Richter am Bundesarbeitsgericht oder zum Vorsitzenden Richter am Bundesarbeitsgericht muss die entsprechende Eignung, Befähigung*

*und fachliche Leistung nach Art. 33 Abs. 2 GG gegeben sein. Diese Aspekte werden durch die dienstlichen Beurteilungen festgestellt (siehe Anmerkungen 2 b). Die Berufsrichter werden regelmäßig und aus Anlass einer möglichen Beförderung durch den Präsidenten des Landesarbeitsgerichts oder die Präsidentin des Bundesarbeitsgerichts beurteilt. Die Leistungsbeurteilung ist die wesentliche Basis für die Beförderungsentscheidungen.*

*Insbesondere das Verfahren bei der Wahl der Bundesrichter ist in der Öffentlichkeit insbesondere wegen mangelnder Transparenz und der Tatsache, dass bei der Wahl neben der fachlichen Qualifikation auch die parteipolitische Ausrichtungen der Kandidaten manchmal eine Rolle spielen, immer wieder kritisch beurteilt worden. Der ehemalige Richter am Bundesverfassungsgericht Böckenförde spricht von „Parteipatronage“ und „personeller Machtausdehnung der Parteien“. Dementsprechend haben beispielsweise die Präsidenten der Oberlandesgerichte und des Bundesgerichtshofs seit längerem gefordert, dass die Bundesrichter in einem transparenten Verfahren ausschließlich aufgrund ihrer persönlichen und fachlichen Eignung zu berufen seien. Dabei gilt es aber zu bedenken, dass die Beteiligung von gewählten Abgeordneten bei der Richterwahl der Verwirklichung des Demokratieprinzips (Art. 20 Abs. 2 Satz 1 GG) dient, während ein Kooptationssystem, also ein System, bei dem sich die Richterschaft allein durch Wahl der Richter selbst ergänzt, verfassungsrechtlich viel problematischer wäre.*

**(g) How are the Lay members appointed and who appoints them and for what length of terms?**

*Die ehrenamtlichen Richter werden – in allen Instanzen - für die Dauer von 5 Jahren berufen (§§ 20,37,43 ArbGG). Eine wiederholte Berufung ist zulässig. In den Ländern werden sie von den Landesministern, für das Bundesarbeitsgericht von der Bundesministerin für Arbeit und Soziales aufgrund von Vorschlagslisten berufen. Die Vorschlagslisten werden von Gewerkschaften, Arbeitgeberverbänden und Körperschaften des öffentlichen Rechts eingereicht. Die Auswahl aus den Vorschlagslisten erfolgt in angemessenem Verhältnis zur Bedeutung der einzelnen Verbände und Gewerkschaften unter Berücksichtigung der Minderheiten (§ 20 Abs. 2 ArbGG). Beim Bundesarbeitsgericht sollten die ehrenamtlichen Richter zuvor mindestens 5 Jahre bei einem Arbeits- oder Landesarbeitsgericht tätig gewesen sein.*

**[3] How is the budget of the Labour Court determined? By who or which body?**

**[4] Under what circumstances can a judge or lay member be dismissed from office and is this done in practice?**

*Sowohl die Berufsrichter als auch die ehrenamtlichen Richter sind nach dem Grundgesetz/nach unserer Verfassung unabhängig und nur dem Gesetz unterworfen. Sie unterliegen in ihrer richterlichen Tätigkeit keinerlei Weisungen, insbesondere der Exekutive.*

*Bei **Berufsrichtern** muss man unterscheiden: den allgemeinen Regelungen für die Entlassung eines Richters ( § 21 Deutsches Richtergesetz, DRiG – dismissal from service) und der Entlassungsmöglichkeit eines Proberichters (dismissal of a judge on probation – in seinen*

*ersten (drei) Dienstjahren – unter erleichterten Voraussetzungen (§ 22 DRiG). Hinzu kommt die Möglichkeit, Richter aufgrund von strafrechtlichen Verurteilungen durch gerichtlichen Entscheidungen zu entlassen (§ 24 DRiG)*

## **Section 21**

### **Dismissal from service**

(1) A judge shall be dismissed

1. where he loses his status of being a German in terms of Article 116 of the Basic Law,
2. where, except as otherwise provided by statute, he enters the service of, or takes up office with, another public employer, or
3. where he is appointed a professional soldier or a soldier serving for a specified term.

In cases under number 2 the highest service authority concerned can, with the agreement of the new service employer and with the consent of the judge, direct that judicial tenure shall continue in addition to the new service position or office held.

(2) A judge shall be dismissed

1. where he refuses to take the judicial oath (section 38),
2. where at the time of his appointment he was a member of the German Bundestag or of a *Land* parliament and did not resign his parliamentary seat within the reasonable time-limit set by the highest service authority concerned,
3. where he was appointed after reaching retirement age,
4. where he requests his own dismissal in writing,
5. where he has reached retirement age or is unfit for service and the service relationship has not ended in his retirement, or
6. where he takes up abode or permanent residence abroad without the consent of the highest service authority.

(3) In the absence of his own written consent a judge for life or for a specified term can only be dismissed on the strength of a judicial decision that has entered into final and binding effect. Dismissal pursuant to subsection (1) of a judge for life or for a specified term can only be alleged after a court declaration having final and binding effect.

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## **Section 22**

### **Dismissal of a judge on probation**

(1) A judge on probation can be dismissed on expiry of six, twelve, eighteen or twenty-four months following his appointment.

(2) A judge on probation can be dismissed on expiry of the third or fourth year

1. where he is not suited to hold judicial office, or
2. where a judicial selection committee refuses to give him judicial tenure for life or for a specified term.

(3) A judge on probation can in addition be dismissed where he has conducted himself in a manner which would lead, in the case of a judge for life, to a disciplinary measure impossible in formal disciplinary proceedings.

(4) The time-limits stipulated in subsections (1) and (2) shall be extended to cover any period of unpaid leave.

(5) In the cases under subsections (1) and (2) the judge shall be notified of the dismissal order at least six weeks before the day of dismissal.

## **Section 23**

### **Dismissal of a judge by commission**

The provisions concerning termination of probationary judicial tenure apply *mutatis mutandis* to the termination of judicial tenure by commission.

## **Section 24**

### **Termination of service by judicial decision**

Where judgment is given against a judge by a German court within the area of application of this Act imposing

1. a sentence of at least one year's imprisonment for a criminal offence committed with intent,
2. a sentence of imprisonment for a criminal offence committed with intent and punishable in accordance with the provisions concerning the ban on wars of aggression, high treason, jeopardy to the democratic constitutional state or concerning espionage and jeopardy to external security,
3. disqualification from holding public office, or



#### 4. forfeiture of a basic right under Article 18 of the Basic Law,

judicial tenure shall cease upon entry into final and binding effect of such judgment without any need for a further judicial decision.

*Die Berufsrichter können grundsätzlich gegen ihren Willen nur durch eine Entscheidung eines Gerichts (Richterdienstgericht) ihres Amtes enthoben oder versetzt werden.*

*Auch ehrenamtliche Richter können vor Ablauf ihrer Amtszeit gegen ihren Willen nur unter bestimmten gesetzlich geregelten Voraussetzungen und nur durch Entscheidung eines Gerichts abberufen werden (§ 44 Abs. 2 DRiG). Nach § 27 ArbGG ist ein ehrenamtlicher Richter seines Amtes zu entheben, wenn er seine Amtspflichten grob verletzt. Problematisch ist, was seine Amtspflichten sind und wann eine grobe Verletzung vorliegt. Auch ehrenamtliche Richter können aber gegen ihren Willen nur unter bestimmten gesetzlichen Voraussetzungen*

*Zu den einzelnen Fragen*

##### *(a) Age –*

*Nach § 48 DRiG scheiden die Berufsrichter mit Erreichen eines bestimmten Alters auch ohne ihre Zustimmung aus dem Richteramt aus; derzeit steigt die Altersgrenze von 65 auf 67 Jahre an.*

##### *(b) Misbehavior – are judges subject to disciplinary action, by whom.*

*Richter sind unabhängig und nur dem Gesetz unterworfen (Art. 97 Abs. 1 GG, § 1 Gerichtsverfassungsgesetz (Im Folgenden: GVG), § 25 DRiG). Einer Dienstaufsicht untersteht der Richter nur, soweit nicht seine Unabhängigkeit beeinträchtigt wird (§ 26 Abs. 1 DRiG). Die richterliche Unabhängigkeit ist grundlegendes Merkmal einer rechtsstaatlichen Rechtspflege. Durch die richterliche Unabhängigkeit wird die für den Rechtsstaat unerlässliche Gewaltenteilung garantiert und sichergestellt, dass der rechtsunterworfenen Bürger sich einem neutralen Richter gegenüber sieht. Die richterliche Unabhängigkeit besteht im Interesse der Rechtssuchenden, Sie ist deshalb kein Grundrecht und Standesprivileg der Richter. Die Unabhängigkeit besteht nur gegenüber der Exekutive nicht aber gegenüber dem Gesetzgeber oder den höheren Gerichtsinstanzen, soweit das Gesetz eine Bindung an deren Entscheidungen anordnet.*

*In der Bundesrepublik Deutschland unterscheidet man die sachliche Unabhängigkeit und die persönliche Unabhängigkeit. Sachliche Unabhängigkeit meint die Freiheit von Weisungen, dh. jede Art von Einflussnahme ist unzulässig. Weder ein Gerichtspräsident noch ein Minister ist berechtigt, einem Richter eine Weisung zu erteilen, wie er einen bestimmten Fall zu entscheiden hat. Diese sachliche Unabhängigkeit steht jedem Richter, also auch dem Richter auf Probe und dem ehrenamtlichen Richter, zu. Persönliche Unabhängigkeit bedeutet, dass ein Richter nicht gegen seinen Willen aus seinem Amt entlassen oder versetzt werden kann (§ 30 DRiG). Die persönliche Unabhängigkeit dient der Absicherung der sachlichen Unabhängigkeit. Sie soll verhindern, dass missliebige Richter entlassen oder versetzt werden.*



*Entlassungen oder Versetzungen als Disziplinarmaßnahme sind nur durch gerichtliche Entscheidungen - also nur durch Entscheidungen unabhängiger Richter - möglich. Persönliche Unabhängigkeit kommt allerdings nur den auf Lebenszeit angestellten Richtern zu (Art. 97 Abs. 2 GG).*

*Die durch die richterliche Unabhängigkeit garantierte Weisungsfreiheit gilt nur für die richterliche Tätigkeit, also die Rechtsprechung, nicht aber für Aufgaben der Gerichtsverwaltung. Richterliche Unabhängigkeit enthebt den Richter auch nicht von der Bindung an das Gesetz. Auch befreit die Weisungsfreiheit den Richter nicht von (allgemein gehaltener) Kritik und von Haftung für Amtspflichtverletzungen.*

*Die richterliche Unabhängigkeit stellt den Richter auch nicht von einer Dienstaufsicht frei. Er unterliegt der Dienstaufsicht insoweit, als nicht die richterliche Unabhängigkeit betroffen ist. Im Rahmen der Dienstaufsicht kann dem Richter die ordnungswidrige Ausführung der Dienstgeschäfte dann vorgehalten werden, wenn es um die Sicherung des ordnungsgemäßen Geschäftsablaufs, um die äußere Form, den so genannten Bereich der äußeren Ordnung, oder um richterliche Tätigkeiten geht, die dem Kernbereich der Unabhängigkeit so weit entrückt sind, dass für sie die Garantie der richterlichen Unabhängigkeit nicht in Anspruch genommen werden kann. So ist es zB zulässig, den Richter zur Pünktlichkeit anzuhalten. Zulässig sind nach der Rechtsprechung des Dienstgerichts des Bundes auch Geschäftsprüfungen, Vergleiche von Erledigungszahlen, Vorhalt von Rückständen, das Rügen einer gesetzwidrigen Terminierungspraxis und die Anregung, einen weiteren Sitzungstag in der Woche abzuhalten. Die dienstaufsichtführende Stelle darf aber keine Würdigung der Sach- und Rechtslage vornehmen, die nur den Rechtsmittelgerichten zukommt. Der Inhalt einer Entscheidung ist der Dienstaufsicht entzogen. Der Dienstaufsicht ist der Kernbereich der richterlichen Unabhängigkeit entzogen. Hierzu gehören nicht nur die Entscheidungen des Richters selbst, sondern auch alles, was hiermit in Zusammenhang steht, beispielsweise die Vorbereitung und Durchführung der mündlichen Verhandlung. So ist es unzulässig, einem Richter vorzuhalten, seine Verhandlungsführung sei nicht straff genug oder er bemühe sich zu sehr darum, die Parteien zu einem Vergleich zu bewegen.*

*Bsp: (aus dem Spiegel vom 14.10.2014) für eine Personalmaßnahme aufgrund der Dienstaufsicht:*

Seit einem Jahr war im fränkischen Lichtenfels Maik B. als Amtsrichter ernannt und tätig. Er war jahrelang in der rechtsextremen Szene in Brandenburg aktiv. Er war Kopf des Neonazi-Musikprojekts "Hassgesang" und Hintermann der 2012 vom Potsdamer Innenministerium verbotenen "Widerstandsbewegung in Südbrandenburg", die auch unter dem Namen "Spreelichter" bekannt wurde. Des Weiteren soll er an einer Schulungsveranstaltung mit einem Waffen-SS-Veteranen teilgenommen haben.

Nach seinem Umzug nach Bayern wurde Maik B. trotz seiner Neonazi-Vita im November 2013 Zivilrichter am AG Lichtenfels. Im Februar 2014 übermittelte der Brandenburger

Verfassungsschutz den bayerischen Kollegen umfangreiche Erkenntnisse über Maik B. Es wurde ein Entlassungsverfahren vorbereitet, dem Maik B. durch sein Entlassungsgesuch zuvor kam.

#### **(c) Conflict of Interest**

*Die Richter (Berufs- wie ehrenamtliche Richter) sind von der Ausübung des Richteramtes in Einzelfällen nach § 41 der Zivilprozessordnung (ZPO) gesetzlich ausgeschlossen,*

- in denen sie selbst Partei sind oder in einem Verhältnis zu einer Prozesspartei in einem Verhältnis stehen, in denen ein Ehegatte, ein Lebenspartner oder ein Verwandter (gerade Linie) betroffen ist,*
- in denen er als Zeuge oder Sachverständiger vernommen wurde,*
- in denen er in einem früheren Rechtszug bei der Entscheidung mitgewirkt hat.*

*Nach § 42 ZPO kann eine Prozesspartei den beteiligten Richter "wegen Besorgnis der Befangenheit", dh. wenn ein Grund vorliegt, der geeignet ist, Misstrauen gegen die Unparteilichkeit eines Richters zu rechtfertigen, ablehnen. Zu der zuletzt genannten Ablehnungsmöglichkeit gibt es eine umfangreiche Rechtsprechung. Die Problematik dreht sich vor allem um das Verhalten des – abgelehnten – Richters im Prozess (unsachgemäße Verfahrensleitung; Drängen der Parteien zum Vergleich mit "unlauteren Hinweisen"). Über das Ablehnungsgesuch entscheidet das Gericht, dem der Abgelehnte angehört, ohne dessen Mitwirkung (§ 45 ZPO).*

#### **(d) Senility, mental disease**

*Eine Entlassung kann nach § 21 Abs. 2 Nr. 5 DRiG oder eine (vorläufige) Versetzung in den Ruhestand nach § 34 DRiG wegen „Dienstunfähigkeit“ erfolgen. Allerdings bedarf es einer gerichtlichen Entscheidung (siehe oben); auch muss die Erkrankung im Übrigen aufgrund ärztlicher Gutachten feststehen.*

**[5] Is there an independent body which handles public complaints against the court system, including the judges and the lay members? If so, please provide a short description of this body.**

*Ein spezielles Gremium gibt es nicht. Bürger, Rechtsanwälte, Prozessparteien können "Dienstaufsichtsbeschwerden" anbringen.*

*Diese werden idR vom jeweiligen Präsidenten bearbeitet.*

#### **(a) Can the public file complaints against the judges?**

*Im Prinzip ja – Erfolgsaussichten eher null (wegen eines möglichen Eingriffs in die richterlichen Unabhängigkeit)*

**[6] Who decides which judges hears which each case?**

*In der bundesdeutschen Justizorganisation allgemein und in der Arbeitsgerichtsbarkeit im Besonderen wird die Zuständigkeit des einzelnen Gerichts durch das Gesetz (GVG, ZPO und*

ArbGG) festgelegt. Die Zuständigkeit der einzelnen Kammern eines Gerichts oder des einzelnen Senat des Bundesarbeitsgerichts sowie des einzelnen Richters als Berichterstatter wird nach Geschäftsverteilungsplänen, die von den Präsidien (einem Richtervertretungsorgan) der Gerichte erstellt werden, bestimmt (§ 21 e GVG). Die Geschäftsverteilungspläne geben abstrakte Kriterien vor, nach denen die Fälle verteilt werden. Danach steht bspw. bereits bei Eingang eines Falles beim Bundesarbeitsgericht fest, welcher Senat in welcher Besetzung mit welchem Berichterstatter den Fall zu bearbeiten hat. Weder die Gerichtsverwaltung, die Präsidentin oder der Vorsitzende eines Senats kann einen einzelnen Fall einem bestimmten Richter hiervon abweichend zuweisen.

(a) Does any person or body outside the court have any say on which judge hears a specific case?

No, not at all

(b) Who decides which lay members will sit on each panel?

Auch dies ergibt sich aus den allgemeinen, abstract gefassten Geschäftsverteilungsplänen.

(c) Does any person or body outside the court have any say on which lay members hear a specific case?

No, not at all

[7] Who decides on promotion of judges to higher courts?

Siehe oben , 2 und 2 b

### III. Judicial Ethics, social media and court independence

[8] Are there rules of judicial ethics for the general court judges and the Labour Court judges?

(a) Is there an enforcement procedure for these rules?

(b) Is there a method whereby judges can ask for rulings about how to act or behave when they have questions about their behavior?

(c) Are there rules of judicial ethics for the lay judges?

In der Bundesrepublik Deutschland existieren keine gesetzlich gestalteten Ethik-Regelungen für Richter. Im Zuge der allgemeinen öffentlichen Diskussion über Ethikregelungen für „Banker“ oder Ärzte hat auch in Richterkreisen und vor allem in den richterlichen Berufsverbänden eine Diskussion über die Notwendigkeit von Ethik-Regelungen begonnen ([URL:fileadmin/docs/120121 DRB-Diskussionspaier Richterethik in Deutschland.pdf](http://fileadmin/docs/120121_DRB-Diskussionspaier_Richterethik_in_Deutschland.pdf) oder <http://www.drb.de/cms/index.php?id=459>) .

Allgemein besteht eine große Skepsis gegenüber solchen fixierten Standards, insbesondere wenn sie mit Disziplinarmaßnahmen kombiniert werden sollen. Es herrscht die Auffassung vor – wie sie der ehemalige Präsident des Bundesverfassungsgerichts Papier formuliert hat, dass sie überflüssig seien und sie auch nicht

„die innere Unabhängigkeit des Richters ... garantieren (können). Sie ist eine dem Richter persönlich gestellte Aufgabe. Er muss seine innere Unabhängigkeit gerade gegenüber den rechtlich nicht fassbaren Einwirkungen bewahren.“

[9] Are judges and lay members allowed to be active members of political parties? Run for political office? Do private work as arbitrators, mediators, attorneys?

*Richter können Mitglied einer politischen Partei sein.*

*Sie können sich auch für politische Wahlämter bewerben.*

*Ist eine Wahl erfolgreich bzw. wird der Richter ein Amt in der Exekutive übertragen, kommt es zu einer Beendigung des Richteramtes. § 4 Abs.1 DRiG formuliert zunächst allgemein, dass Richter „nicht zugleich ... Aufgaben der gesetzgebenden oder der vollziehenden Gewalt wahrnehmen darf.“ Näheres regelt dann § 36 DRiG.*

### Section 36

#### Membership of a parliamentary body or government

*(1) Where a judge consents to his nomination as a candidate for the election to the German Bundestag or to the legislative body of a Land he shall, on application being made, be granted unpaid leave, being necessary in preparation for his election, during the last two months before election day.*

*(2) Where a judge accepts election to the German Bundestag or to the legislative body of a Land or where the judge is appointed, with his own consent, a member of the Federal Government or of the government of a Land, the right and the duty to hold judicial office shall cease without a court decision and in accordance with specific statutory provision.*

*Als Rechtsanwälte dürfen Richter während ihrer Amtszeit nicht tätig sein; nach dem Ausscheiden aus dem Dienst ist eine Tätigkeit als Rechtsanwalt möglich; es gibt aber Beschränkungen bzgl. der räumlichen Tätigkeit.*

*Richter können schon während ihrer Amtszeit „Nebentätigkeiten“ ausüben und bspw. als Schlichter, Mediator oder Einigungsstellenvorsitzender (§ 4 Abs. 2 Nr. 5 DRiG) – in zeitlich beschränktem Umfang – tätig werden.*

(a) Are judges and lay members allowed to participate in any fashion in political or social public demonstrations, such as marches, rallies, protests, etc.?

*Ja, grundsätzlich.*

*Gilt sowohl für Demonstrationen für „eigene“ – berufliche - Anliegen als auch für allgemeine politische Themen.*

*Beispielsweise eine Demonstration von Richtern aus Brandenburg im Frühjahr 2015 in Potsdam gegen Stellenabbau und Stellenkürzungen, weil sie ihrer Ansicht nach am Limit arbeiten und 100 Stellen gestrichen werden sollten.*

[9] Are there limitations on the ability of judges or lay members to express themselves in public lectures? In the media? To appear on television or radio?

*Es gibt keine konkreten Regelungen.*

*Über allen Äußerungen und Aktivitäten steht der allgemeiner Grundsatz des Zurückhaltungs- und Mäßigungsgebot nach § 39 DRiG.*

### **Section 39**

#### **Maintenance of independence**

In and outside office a judge shall conduct himself, in relation also to political activity, in such a manner that confidence in his independence will not be endangered.

*Hierzu sind nach wie vor die - historischen - Fälle aus den achtziger Jahren des vorherigen Jahrhunderts von besonderer Bedeutung. Damals demonstrierten zahlreiche Richter – unter Verwendung ihrer Amtsbezeichnung – als “Richter und Staatsanwälte für den Frieden” gegen die Stationierung von amerikanischen Atomraketen (Pershing) in der Bundesrepublik Deutschland und gegen den sog. “NATO-Doppelbeschluss”. Zum einen gaben sie Anzeigen in Tageszeitungen auf, in denen sie gegen die Raketenstationierung - unter Nennung ihrer Namen und ihrer Amtsbezeichnung - protestierten (siehe den umfangreichen Sachverhalt im Urteil des Bundesverwaltungsgericht (BVerwG) vom 29. Oktober 1987 - 2 C 72/86 - NJW 1988,1748 ff.). Zum anderen protestierten einige der Richter vor dem Nato-Stützpunkt “Mutlangen” und blockierten ua. die Zufahrten zur Kaserne („Sitzblockade“). Die Dienstherrn verhängten gegen die beteiligten Richter Disziplinarmaßnahmen mit der Begründung, die Richter ihre Aktivitäten widersprächen der notwendigen, gebotenen Zurückhaltung eines Richters bei politischer Betätigung.*

*Das BVerwG bestätigte die Rechtmäßigkeit der Disziplinarmaßnahmen mit der Begründung, zwar genieße der Richter „als Bürger“ das Grundrecht der Meinungsfreiheit. „Als Richter“ sei aufgrund seines Amtes zur Mäßigung und Zurückhaltung verpflichtet. Diese Trennung müsse er im „politischen Meinungskampf“ beachten und respektieren. Er verletze seine Amtspflichten, wenn er das Richteramt ausdrücklich in Anspruch nehme und einsetze, um seiner politischen Auffassung größere Beachtung und Überzeugungskraft zu verschaffen. Das Bundesverfassungsgericht (BVerfG) ist dem BVerwG gefolgt und hat die Verfassungsbeschwerde eines der betroffenen Richter zurückgewiesen (BVerfG v. 6. Juni 1988 - 2 BvR 111/88 - NJW 1989, 93 ff.). Das BVerfG hat ua. ausgeführt, dass politische Meinungsäußerungen von Richtern durch das Grundrecht auf freie Meinungsäußerung grundsätzlich nur dann gedeckt sei, wenn die Äußerungen mit den Regelungen des DRiG (§ 39), die die Unabhängigkeit der Richter gewährleisteten, in Einklang stehen würden. Es sei*

*verfassungsrechtlich nicht zu beanstanden, wenn der Dienstherr vom Richter ein „bestimmtes Maß an Zurückhaltung“ fordere, wo das persönliche Bekenntnis einer Richter mit dem „Ansehen des Amtes“ in Konflikt gerate und der Richter das mit dem Amt verbundene Ansehen und Vertrauen nutze, um seine Meinung im politischen Meinungskampf mehr Nachdruck zu verleihen.*

[11] Have there been any court cases in your country regarding the independence of the Labour Courts or judicial ethics?

Have there been any claims by labour unions or management organizations that the Labour Courts are not independent or are influenced in any way by politicians' or political motives?

*Aus dem Bereich der Arbeitsgerichtsbarkeit gibt es einen „berühmten“ Fall, der für die heutigen Diskussionen nach wie vorher leitend ist: der sog. Fall Hoechst.*

*Der Sachverhalt stellt sich – vereinfacht – wie folgt dar (Ausgangsfall: Arbeitsgericht Frankfurt am Main, Urteil vom 11. Mai 1982 – 12 Ca 31/82 – NJW 1984,142):*

*Die Parteien streiten über die Wirksamkeit einer außerordentlichen Kündigung, die die Arbeitgeberin damit begründet hat, dass der Arbeitnehmer auf einer Parteiversammlung der Sozialdemokratischen Partei Deutschlands (SPD) sinngemäß geäußert hatte, er sei Beschäftigter eines Chemieunternehmens, das jahrelang in der Lage sei, die hessische Landesregierung mit dem Argument „Arbeitsplätze“ zu erpressen, um die lebensbedrohliche Verseuchung der Umwelt (insbesondere des Flusses Main) durchzusetzen.*

*Während der Verhandlung des Arbeitsrechtsstreits hat die Arbeitgeberin den für die Entscheidung zuständigen Berufsrichter F (und auch dessen Vertreterin M) wegen Besorgnis der Befangenheit (siehe oben) mit der Begründung abgelehnt, sie seien wegen „ihrer politischen Einstellung“ nicht unvoreingenommen. Sie gehörten zu den Unterzeichnern eines offenen Briefs an die hessische Landesregierung, in dem ua „eine Amnestie für alle strafrechtlich verurteilten Gegner der Proteste gegen den Ausbau des Flughafens Frankfurt (Startbahn West) gefordert worden ist. Der hier gekündigte Arbeitnehmer habe seine verleumderische Äußerung auch bei einer Veranstaltung der „Startbahngegner“ gemacht. Die Arbeitgeberin hat dann noch weitere politische Äußerungen des Richters F „aufgeführt und dessen Nähe zu den Gewerkschaften angeführt“ und geäußert, er – und auch seine Stellvertreterin – hätten damit die von Amts wegen geforderte Zurückhaltung verletzt.*

*Der Ablehnungsantrag der Arbeitgeberin hatte keinen Erfolg. Das Verfahren endete erst mit einer Entscheidung des Bundesverfassungsgerichts (vom 15. März 1984 – NJW 1984,1874)*

*In dieser Entscheidung führt das BVerfG ua. aus, dass „ nach Art. 9 Abs. 3 GG für jedermann und alle Berufe gewährleistet (ist). Richtern – auch der Arbeitsgerichtsbarkeit – ist daher von Verfassung wegen gestattet, sich gewerkschaftlich zu betätigen. Dazu gehört die Teilnahme an einem Arbeitskreis „Recht“ der Gewerkschaft ötv, selbst wenn sich dabei vor den*

*Arbeitsgerichten auftretende Anwälte an der allgemeinen Erörterung aktueller arbeitsrechtlicher Probleme beteiligen..."*

[12] Has there ever been instances of people or bodies who have attempted to influence a judgment of your court?

*Direkte Einflussnahmen sind uns nicht bekannt.*

*Mittelbar versuchen interessierte Kreise – Arbeitgeber wie auch Gruppen von Arbeitnehmern oder Gewerkschaften - über wissenschaftliche Veröffentlichungen sowie durch sog. public litigation über Presse, Funk und Fernsehen Einfluss zu nehmen.*

Has there ever been "political" influence on your Labour Court system from outside your country, such as from EU, UN or ILO bodies? This does not refer to the EU court system or the European Courts, but to political influence from outside your country by international unions or employer associations, foreign embassies, international sports associations, etc.

*Nicht bekannt*

*Bekannt geworden sind nur versuchte Einflussnahmen in Strafprozessen bei Verstrickungen von Libyen und dem Iran bei bestimmten Bombenattentaten.*

#### **IV. Social Media and the Courts**

[13] Are judges and lay members allowed to use the social media?

*Ja. Es gibt kein generelles Verbot.*

(a) Can and do judges have connections thru the use of Facebook, tweeter and similar social media?

*Ja, wie alle Bevölkerungsgruppen nutzen auch Richter soziale Medien.*

*Die beiden großen richterlichen Interessensverbände (Deutscher Richterbund; Neue Richtervereinigung) unterhalten Facebook-Profilen. Internetforen für Richter gibt es allerdings wenig. Anders als etwa die Seite [www.rechtspflegerforum.de](http://www.rechtspflegerforum.de), auf der sich Rechtspfleger - öffentlich einsehbar - auch inhaltlich rege austauschen, wurde die Seite [www.richterforum.de](http://www.richterforum.de) - wohl aus Mangel an Interesse - unlängst eingestellt. Das Internetforum des Deutschen Richterbunds (<https://www.drb-forum.de>) ist nicht öffentlich zugänglich, sondern nur für Mitglieder.*

(b) Can and do they have blogs or web pages?

*Es gibt sicherlich einzelne Richter, die über private Blogs oder Internetseiten verfügen (etwa <http://www.doerig.de/> des Bundesverwaltungsrichters Harald Dörig oder <http://fischer-stgb.de/> des Vorsitzenden Richters am Bundesgerichtshof Thomas Fischer). Im großen Stil*



dürfte dies aber nicht üblich sein. Zudem sind etwa auf den genannten Seiten wenig persönliche Informationen/Meinungen abrufbar.

Are there limits to the extent of personal information which judges or lay members are permitted to publish on social media? For example, can they state their private telephone number and address, spouse name and place of work, marital status, and sexual preference?

Es gibt mE keine konkreten Regelungen über den Umfang bzw. die Grenzen der Veröffentlichung von persönlichen Informationen bzw. Daten oder Meinungen durch Richter auf ihren Internetseiten bzw. Profilen in sozialen Medien. Vielmehr dürften nur die allgemeinen Verhaltensregeln aus den Richtergesetzen der Länder bzw. des Bundes gelten. So hat sich etwa ein Richter nach § 39 DRiG „innerhalb und außerhalb [Herv. durch den Verf.] seines Amtes, auch bei politischer Betätigung, so zu verhalten, dass das Vertrauen in seine Unabhängigkeit nicht gefährdet wird“. Dieses „Mäßigungsgebot“ gilt danach grundsätzlich auch für den nichtdienstlichen Bereich und kann somit auch Grenzen für die Zulässigkeit des außerdienstlichen Verhaltens eines Richters in sozialen Medien setzen.

(c) Can and do they put pictures of themselves on the social media and use social media like Facebook, Tweeter, and Instagram?

Ja.

(d) Can and do judges use any of the above social media forms to communicate with each other?

Vermutlich. Siehe oben zu den Foren bzw. den Profilen von Richtern in sozialen Netzwerken.

(e) Are there any rules governing lay members which relate to the above questions?

Wie bei Berufsrichtern sind keine ausdrücklichen Regeln zum Verhalten von ehrenamtlichen Richtern in sozialen Netzwerken vorhanden. Es gelten nur allgemeine Verhaltensregeln wie bei den Berufsrichtern.

(f) If the answer to any of the above questions is positive, how is it used, are there any other limitations to its use and have there been any problems with its use?

Größere Probleme bzw. öffentlich breit ausgeschlachtete „Skandale“ sind zahlenmäßig gering. Mediales Interesse fand etwa der Fall des Vorsitzenden eines OLG-Strafsenats, von dem vor der Verhandlung eines „islamischen Terror-Prozesses“ ein Bild auf seiner privaten Facebook-Seite auftauchte, auf dem er ein T-Shirt mit dem Namen eines muslimischen Feldherren trug (siehe [http://www.focus.de/politik/videos/kurz-vor-prozessbeginn-richter-sorgt-mit-sultan-mehmet-shirt-fuer-wirbel\\_id\\_4415053.html](http://www.focus.de/politik/videos/kurz-vor-prozessbeginn-richter-sorgt-mit-sultan-mehmet-shirt-fuer-wirbel_id_4415053.html)). Zudem gab es den Fall eines Proberichters in Bayern, der der Neonazi-Szene angehörte und auf seiner privaten Facebook-Seite entsprechende Stellungnahmen abgegeben hatte

(<http://www.sueddeutsche.de/bayern/behoerden-in-bayern-fehler-im-umgang-mit-nazi-richter-zugegegen-1.2208215>).



(g) If there is a judicial code of ethics applying to judges and/or lay members, do these relate to issues arising out of the use of the social media? If so, please describe them.

*Nein, es sind keine konkreten Regeln zu sozialen Netzwerken vorhanden.*

[14] Do judges, yourself included, consider the social networks, internet or the media in general a legitimate method of learning about disputes which are being litigated before your court?

*Nein, ein legitimes Mittel zur „Vorbereitung“ auf einen Prozess sollte die öffentliche Berichterstattung im Internet/den Medien idealerweise nicht sein, da dies die Unvoreingenommenheit/Unabhängigkeit beeinträchtigen kann.*

(a) Will you read a newspaper or internet article about a dispute being litigated in your court?

*Wohl dennoch ja, jedenfalls nach Abschluss des Prozesses.*

(b) May an attorney arguing a case in your court refer to information appearing in the social media, internet or the media? Will it be given any importance in your opinion?

*Nein.*

May an attorney ask a witness a question on cross examination based on such an information appearing in the social media, or a media article or any item published in the internet?

*Nein.*

[15] Do you feel that the social media or the social networks have any influence on the hearings or judgements of your court?

*Nein, die sozialen Medien bzw. Netzwerke haben für sich gesehen keinen Einfluss auf die Verhandlungen oder Entscheidungen. Generell kann die mediale Aufmerksamkeit für einen Fall aber schon zur Folge haben, dass man ggf. auf eine andere Art und Weise verhandelt als sonst, weil man im Fokus einer breiteren Öffentlichkeit als üblich steht. Generell würde ich persönlich in diesem Fall wohl „zurückhaltender“ verhandeln.*

[16] Does your country have a general rule of "sub-judice" and is it enforced?

*Nein.*

(a) Does your country have laws and/or regulations regulating social media's relationship to the court system, and the labour courts in particular? If yes, please describe them?

*Nein.*

If there were any judgments on this subject please describe them. (b)

*Es sind keine derartigen Urteile bekannt.*

[17] Has the social media influenced the transparency of your court?

(a) Regarding public access to information about your court?

*Es gibt einen Wikipedia-Eintrag über das BAG mit detaillierten Informationen. Dieser ist mit Facebook verknüpft und auch dort einsehbar.*

(b) Does your court have a site on social media? On Facebook, twitter or a similar site?

*Auf Facebook/Twitter hat das BAG kein eigenes Profil.*

(c) Does your court have an Internet site open to the public?

*Ja.*

Give a brief description of the type of information the public can obtain on this site.

*Auf der Website befinden sich ua. Informationen über:*

- Aufbau, Geschichte und Organisation der Arbeitsgerichtsbarkeit in Deutschland im Allgemeinen und des BAG im Speziellen. Die Namen sämtlicher Bundesrichter sind ebenfalls abrufbar, Bilder sind allerdings nur von der Präsidentin und dem Vizepräsidenten vorhanden.*
- die Geschäftsverteilung;*
- alle Entscheidungen in Revisions- und Rechtsbeschwerdesachen seit 2010 im Volltext;*
- Pressemitteilungen zu Verfahren und Personellem (z.B. Ernennung bzw. Ausscheiden von Richtern/Vorsitzenden);*
- aktuelle Informationen.*

What are the languages of the site?

*Der gesamte Inhalt der Seite ist als solcher nur auf deutsch abrufbar. Auf englisch und auf französisch sind lediglich Informationen in eingeschränktem Maße verfügbar.*

Are the judges' and lay members legal ethics published on the site?

*Nein, soweit ersichtlich nicht.*

Are decisions of disciplinary hearings concerning judges or lay members published on the Courts' internet site?

*Nein.*

(d) Does the public have access on the social media to hearings in your court?

*Nein.*

(e) Is it permissible to record or film hearings in a Labor Court? If yes, is it permissible for a party to a hearing or a person attending a hearing to record the hearing and then post it on the social media?

*Nein. § 169 Satz 2 GVG untersagt dies ausdrücklich.*

Can the court protocol or evidence be posted on the social media?

*Nein.*

(f) Are there limits to what the public, judges, lay members or parties can say in the social media about Labour Court judges and/or about the way the judges conducted a hearing or court judgments?

*Nein.*

Have there been any charges of contempt of court relating to information appearing in the social media?

*Nein, keine bekannt.*

(g) Given the open character of the social media and the difficulty to control information appearing on it, is it still possible:

(1) To conduct some hearing "in closed court"?

*Der Ausschluss der Öffentlichkeit ist in sehr engen Grenzen zulässig, etwa bei der Vernehmung Minderjähriger oder soweit allgemein Umstände aus dem persönlichen Lebensbereich eines Prozessbeteiligten bzw. Zeugen zur Sprache kommen, deren öffentliche Erörterung schutzwürdige Interessen verletzen würde, soweit nicht das Interesse an der öffentlichen Erörterung dieser Umstände überwiegt.*

(2) To prohibit publishing of certain information revealed in a court case. For example: in cases involving sexual harassment

*Von gerichtlicher bzw. staatlicher Seite kann mE die Veröffentlichung solcher Informationen nicht verhindert werden. Dies schließt private Rechtsbehelfe von Betroffenen, etwa wegen Verletzung ihres Persönlichkeitsrechts durch die drohende oder erfolgte Veröffentlichung aber nicht aus.*

(3) To prohibit publication of the victim's name or details of the harassment.

*Siehe die Antwort zu [16] (g) (2).*

[18] Has the social media or internet been used to monitor judges' work and/or worktime?

*Nein.*

Is the social media, especially the internet, used for purposes of setting cases and managing judges' workloads?

*Nein.*

[19] Have there been instances when the social media has been involved in revealing internal discussions within judicial panels? Or draft judgments prior to their being signed and delivered to the parties?

*Mir sind keine derartigen Fälle bekannt.*

What steps were taken to prevent these kind of errors?

*Keine.*

[20] Are there any other issues relating to the relationship between the social media and judicial independence which you would like to mention?

*Es gibt einzelne Fälle, in denen sich Richter nach einem Urteil über einen "Shitstorm" - als Phänomen der sozialen Medien - beklagten, etwa nach der Entscheidung eines Landessozialgerichts, wonach auch arbeitslosen EU-Ausländern nationale Sozialleistungen zuzubilligen sind (vgl. <http://www.lto.de/recht/nachrichten/n/hartz-iv-unionsrecht-arbeitslosengeld-eu-buerger/>).*

#### I. The Court System in each country

[1] Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction.

The Hungarian court system consists of the following levels:

District courts (111) – their jurisdiction in criminal and civil cases covers the procedures at first instance. The maximum permissible number of judges in the largest district court is 357, whereas the smallest court operates with one judge.

Administrative and labour courts (20) – their jurisdiction covers procedures at first instance in individual and collective labour disputes, and in administrative actions.

Regional courts (20) – their jurisdiction in criminal, civil and administrative cases covers the adjudication of appeals received from district courts, administrative and labour courts, and procedure at first instance in certain criminal and civil cases.

Regional courts of appeal (5) – their jurisdiction in criminal and civil cases covers the adjudication of appeals received from the regional courts.

Supreme Court (Kúria) (1) – its jurisdiction in criminal, civil and administrative cases covers the review of final cases of the lower instances as extraordinary remedies, as well as the examination of municipal decrees as to compliance with the law and adopting uniformity decisions to harmonize national law.

Also, please relate to the following:

(a) Are the Labour Courts part of the general court system or an independent court system?

Labour Courts are parts of the general court system, although the Administrative and Labour Courts should be considered as specialized courts as they do not deal with any other type of cases.

(b) Is the administration of the Labour Courts independent of the administration of the general courts?

In this regard Administrative and Labour Courts are also part of the general court system. The presidents, vice presidents and heads of departments are appointed by the president of that regional court where the territorial jurisdiction of the Labour Court is.

It must be emphasized that since 2013 a special department exists that coordinates the professional work of the Administrative and Labour Courts. These bodies are called Regional

Administrative and Labour Divisions. Six of these divisions exist and their main function is to provide a professional platform for the judges to discuss the actual issues of administrative and labour jurisdiction.

(c) Does the Labour Court in your country have lay members on its' panels? In all cases? Do they have an equal vote on deciding the outcome of the court's judgment? Are there lay members on the general courts?

On first instance the judicial panel of the labour court consists of one professional judge and two lay judges. Lay judges are elected by the local government, labour unions and unions of employers have the right to suggest candidates - as well as all other civil society has a similar right. According to the civil procedural code, the professional judges concludes the hearing, although lay judges have the same rights and duties, this also stands for voting rights as well. On second instance the panel consists of three professional judges.

There are also lay members in some criminal cases in first instance: on the district court level, if the crime is punishable with 8 or more years of imprisonment and in every case, where the regional court is the first instance (e.g. homicide and other serious crimes). In such criminal cases the panel consists of one professional and two lay judges (exceptionally the panel consists of two professional and three lay judges - if the judges decides that because the complicatedness of the case the panel with more members is necessary).

## **II. The Independence of the Labour Court System**

[2] How are judges appointed to the Labour Courts? Please relate to the following:

The procedure is the same for all judges, including labour judges, it consists of the following steps:

- I. The President of the Court informs the President of the National Office for the Judiciary (PNOJ) when a judge's position becomes vacant.
- II. The PNOJ announces a public call for applications to the vacant position (published on the website and in the official journal of the courts).
- III. The Judicial Council of the court (a self-governing body consisting solely of judges elected by their peers at each Regional Court, Regional Court of Appeal and at the Kúria) forms an opinion about the applicants and ranks them by giving points to evaluate their skills and attributes.
- IV. The President of the Court makes a suggestion to the PNOJ, who should be appointed as a judge at the court.
  - a. When the President of the Court makes a suggestion to PNOJ he/she can only suggest the applicant who is the 1st, 2nd or the 3rd in the ranking of the Judicial Council. If he/she suggests the 2nd or the 3rd, he/she must explain the reasons in a written form.
- V. The PNOJ submits a proposal to the President of the Republic who should be appointed as a judge.

a. The PNOJ can only propose the applicant who is the 1st, 2nd or the 3rd in the ranking of the Judicial Council. If he/she suggests the 2nd or the 3rd in order, he/she must explain the reasons to the National Judicial Council (NJC). The 2nd or the 3rd in ranking can only be suggested to be appointed if the NJC gives its consent.

VI. The President of the Republic decides upon the appointment of a judge.

#### (a) Who appoints the judges to the various instances of the Labour Courts?

The application procedure for the Administrative and Labour Courts (first instance) is described above. For the second instance and higher positions there is another body (the civil and labour law division of the court), that hears the applicants and the result of the hearing is also taken into consideration by the Judicial Council when it ranks the candidates. This division consists of all of the judges of the regional court / regional court of appeal / Kúria, and there also some members delegated from the lower and higher court levels.

#### If there is a committee, who sits on the committee?

There are three committees, that have a role in the application process:

- local judicial councils (a self-governing body consisting solely of judges elected by their peers at each Regional Court, Regional Court of Appeal and at the Kúria),
- the National Judicial Council (the supervisory body of the central administration of courts consisting of 15 members. The members are the president of Kúria and 14 judge-members elected by their peers) - it only has a role if the PNOJ wants to differ from the ranking of the applicants,
- if the application is for a higher court (regional court, regional court of appeal, Kúria) the competent division also hears the applicants before the Judicial Council ranks them.

#### Are there any politicians involved in the appointment process? If so, what is their involvement?

No.

#### (b) What are the qualifications required for people applying to be judges of the various instances of the Labour Courts?

Same qualification requirements apply for all judges. To be appointed as a judge an applicant has to:

- i. be Hungarian citizen
- ii. have the capability to act
- iii. have a university degree in law
- iv. have passed the professional legal exam
- v. give a property declaration

vi. have worked at least one year in a position in which the professional legal exam is needed

vii. pass a physical and psychical examination

viii. be at least 30 years of age.

(c) Please describe the appointment process: who can apply? How does one apply?

See above.

Are there tests given? If so, what are they: written, oral, personality? Are there interviews? If so, who does the interviewing?

When passing the physical and psychical examination the psychologist examines those mental skills of the candidate which are necessary for the judicial work.

When the judicial council (and the professional division) hears the candidate they are focusing on his/her professional skills and motivation.

The judicial council ranks - by giving points - the applicants taking into consideration the following skills and attributes. The skills to be evaluated and number of points to be given is defined by law:

- The evaluation of previous work (e.g. as a trainee judge, court secretary, judge)
- The time formerly spent in legal practice
- Former judicial practice
- The opinion of the competent judicial division (only if this judicial body has to form an opinion during the procedure)
- The result of the professional legal exam
- Degree in legal sciences (PhD)
- Special (legal) qualification
- Taking part in a study visits abroad
- Language knowledge
- Legal publications
- Taking part in the obligatory and facultative courses of the Academy of Justice
- Other professional activities (e.g. being a lecturer at the faculty of law)



(d) Are there necessary qualifications to become a judge in the various instances of the Labour Courts? Years of experience as a lawyer? Years admitted to the Bar? Languages spoken and/or understood? Are recommendations submitted? Are candidates required to take a seminar or personality tests?

See above.

(e) Are there different methods of appointing Labour Court judges as compared to judges of other types of courts?

No, as it was mentioned before, the method is the same. Although it must be emphasized that on second instance Regional Courts deal with labour cases. It is a question of the case distribution which panel handles which type of cases. On this level only those judges can handle labour or administrative cases who have been assigned for these by the PNOJ.

(f) If your system has more than one instance (trial, appeal, supreme) are there different methods of appointing Labour Court judges for the different instances? If so, please describe the methods.

See above.

(g) How are the Lay members appointed and who appoints them and for what length of terms?

As it was mentioned lay judges are elected by the local government, labour unions and unions of employers have the right to suggest candidates - as well as all other civil society has a similar right. To be elected, the candidate must be over 30 years. The election is for a four year term with the possibility of reelection.

[3] How is the budget of the Labour Court determined? By who or which body?

The budget of the Administrative and Labour Court is part of the budget of the Regional Court.

[4] Under what circumstances can a judge or lay member be dismissed from office and is this done in practice?

The reasons for the dismissal of a judge are stated in law:

- a) if the judge resigned,
- b) if the judge is ineligible for the fulfilment of the judicial office for health reasons on a long-term basis or was declared ineligible in the course of the inaptitude proceedings (by the Service Tribunal)
- c) if a prison sentence or a sentence of community service was imposed on the judge on a final basis or the judge was subjected to forced psychiatric treatment,
- d) if the judge failed to take the judicial oath within the time limit,
- e) if the judge loses his/her Hungarian citizenship or the capability to act,

- f) if the judge was elected as a Member of Parliament, Member of the European Parliament, local municipality board member or mayor or was elected or appointed as a state leader
- g) if the judge enters into a legal relationship with an international organisation or any of the agencies of the European Union,
- h) if the judge has completed the applicable old-age pension age or before the completion of this upper age limit, requests his retirement
- i) if, in disciplinary proceedings instituted against the judge, removal from the office of judge was proposed as a final disciplinary sanction,
- j) if it has been found in a judicial review procedure initiated against the result of the call for applications that the conditions for appointment as a judge had not been fulfilled,
- k) if the judge willfully fails to meet the obligation to make a property declaration or willfully states data or facts incorrectly,
- l) if the judge fails to meet his obligation to prove that he/she no criminal record, or is not prohibited from professions requiring a university degree in law,
- m) if the judge fails to attend the medical examination ordered by the president of the court because of the possibility of the health-reasoned based ineligibility of the judge,
- n) if the judge is appointed as the rector of a state institution of higher education or the head of a research centre or research institute,
- o) if the judge terminated his service relationship unlawfully,
- p) if the incompatibility of the judge was adopted with final decision

#### (a) Age

The upper age limit is currently being gradually reduced from 70 to 65 until the year 2022.

(b) Misbehavior – are judges subject to disciplinary action, by whom.

(c) Conflict of Interest

(d) Senility, mental disease

[5] Is there an independent body which handles public complaints against the court system, including the judges and the lay members? If so, please provide a short description of this body.

(a) Can the public file complaints against the judges?

According to legal regulations and internal rules of the court there is a possibility for anyone (not only for the clients of the case) to file a motion “in the favor of the public”. If these motions are filed in connection with one of the courts, the president of the court handles it. If the motion is against the president, or the petitioner is not satisfied with the way the motion was handled the PNOJ answers the motion.

#### [6] Who decides which judges hears which each case?

In Hungary the allocation of cases is regulated by laws and other statutory provisions and also by internal rules of court, whereas the role of judicial practice is limited to the development of internal rules of court.

The case distribution regime is defined by the president of each court, at the latest – in accordance with the relevant legislation – by 10 December of the previous year. The case distribution regime is adopted based on the opinions of the relevant chamber of judges and the competent division of the given court, however, such opinions are not binding.

The substantive rules and criteria for the internal case distribution regime of a court may also be defined – within the framework of the law – by the Organisational and Operational Regulations of the given court.

Based on the afore-mentioned statutory provisions, the case distribution regimes of courts (Kúria, regional courts of appeal, regional courts, district courts, administrative and labour courts) shall be determined for the given year according to the views:

- of the chamber of judges,
- of the competent division,

by the president of the court. That case distribution regime shall be communicated to the judges and shall be published:

- on the courts' website,
- at the clerk's office providing customer services.

The case distribution regime is determined by the president, but on practical terms, the divisions of the courts prepare a recommendation for their own case distribution regime, which are later adopted by the president. The presidents of district courts and administrative and labour courts are relatively independent as well within the framework of the organisational and operational regulations of the courts. In these courts, the president draw up proposals for the case distribution regime, usually following consultation with the judges. Considering that the case distribution regime is assessed by the chambers of judges and divisions, these bodies are entitled to address the case distribution regime any time.

Allocation of cases by means of a computerised method is used in corporate cases which are computerised in their entirety. In other categories of cases, allocation takes place manually in a sense that a given case is not assigned to a judge by computerised methods. Where cases are allocated 'automatically' it is or may be carried out by the court administration office in charge of keeping records of cases by assigning cases to judges according to the case distribution regime (e.g. on the basis of odd and even case numbers, or on the basis of a specific row and number of the cases received).

(a) Does any person or body outside the court have any say on which judge hears a specific case?

No.

(b) Who decides which lay members will sit on each panel?

The president of the court defines the members of the panels in the case distribution regime.

(c) Does any person or body outside the court have any say on which lay members hear a specific case?

No.

[7] Who decides on promotion of judges to higher courts?

If by promotion we mean becoming a judge at a higher court, this can be only a result of an open application procedure (detailed above).

However there is a possibility to receive the title of “the honorary judge of the Kúria”, “the honorary judge of the Regional Court of Appeal”, or “the honorary judge of the Regional Court”. This possibility allows lower court judges who have a long judicial career to receive the title and salary of a higher court judges without leaving their position. The title either comes automatically after serving twenty years on the same level of the court system, or if the judge has an “excellent, suitable for promotion” or “excellent and fully eligible” evaluation grade and minimum 6 years judicial practice at the given court level the National Judicial Council may award these titles to a judge of a lower court.

### **III. Judicial Ethics, social media and court independence**

[8] Are there rules of judicial ethics for the general court judges and the Labour Court judges?

The Association of Hungarian Judges adopted a Code of Ethics in 2005. The new Ethical Code was adopted at a session on 10 November 2014 by National Judicial Council, it came into effect on 1 January 2015.

A judge commits a disciplinary breach if he culpably curtails or jeopardises the reputation of the judicial profession by virtue of his lifestyle or behavior.

(a) Is there an enforcement procedure for these rules?

The disciplinary procedure is carried out by the Service Tribunal.

(b) Is there a method whereby judges can ask for rulings about how to act or behave when they have questions about their behavior?

If the judges are not certain that they are allowed to take part at a special event they can turn to the National Judicial Council for a prior opinion.

(c) Are there rules of judicial ethics for the lay judges?

The Ethical Code is a valid code of conduct not only for professional, but also for lay judges.

[9] Are judges and lay members allowed to be active members of political parties? Run for political office? Do private work as arbitrators, mediators, attorneys?

According to legal regulations neither professional, nor judges cannot be members of political parties and they are not allowed to carry on any political activities.

Beside their offices, professional judges may only perform scientific and educational, training, referee, artistic, copyright, as well as proof-reading, language editing, and technical creation work as paid activities, but this may not jeopardise or give the impression of jeopardising their independence and impartiality, and may not prevent them from fulfilling their official responsibilities.

(a) Are judges and lay members allowed to participate in any fashion in political or social public demonstrations, such as marches, rallies, protests, etc.?

See above.

[10] Are there limitations on the ability of judges or lay members to express themselves in public lectures? In the media? To appear on television or radio?

A judge may not publicly express an opinion on a case currently or previously before the court outside his service relationship, with special regard to cases adjudicated by him.

According to the internal rules of the courts, only the president of the court or upon the decision of the president an employee of the court is allowed to inform the media.

This is a highly debated topic, as many judges think that the decision “speaks for itself”, there is no need for going to the media to wrestle with the clients and lawyers.

[11] Have there been any court cases in your country regarding the independence of the Labour Courts or judicial ethics?

No.

Have there been any claims by labour unions or management organizations that the Labour Courts are not independent or are influenced in any way by politicians' or political motives?

Not really. Sometimes the employers associations made statements that the labour courts decide in favor of the employees, however the statistics do not show such results.

[12] Has there ever been instances of people or bodies who have attempted to influence a judgment of your court?

Throughout Europe judges face the mediatization of justice. Politicians, clients, journalists try to put pressure on the public and also on the courts in some cases. However the cases that are most likely to get some attention are criminal and not labour cases.

Has there ever been "political" influence on your Labour Court system from outside your country, such as from EU, UN or ILO bodies? This does not refer to the EU court system or the

European Courts, but to political influence from outside your country by international unions or employer associations, foreign embassies, international sports associations, etc.

No.

#### **IV. Social Media and the Courts**

[13] Are judges and lay members allowed to use the social media?

According to the Code of Ethics a judge (including lay judges) shall use the World Wide Web with due foresight. Information, sound and video recordings about themselves and their relatives shall only be shared in case it does not impair judicial dignity. Opinions can be shared as long as they do not undermine the dignity of the court or the judicial profession and the regulations in relation to press statements.

(a) Can and do judges have connections thru the use of Facebook, tweeter and similar social media?

Yes they do, and according to the Ethical Code they are allowed to do so until a certain point.

(b) Can and do they have blogs or web pages?

Probably yes, but as they do not have any obligation to report such activities, we cannot be sure of this.

Are there limits to the extent of personal information which judges or lay members are permitted to publish on social media? For example, can they state their private telephone number and address, spouse name and place of work, marital status, and sexual preference?

See above.

(c) Can and do they put pictures of themselves on the social media and use social media like Facebook, Tweeter, and Instagram?

Probably yes, but as they do not have any obligation to report such activities, we cannot be sure of this.

(d) Can and do judges use any of the above social media forms to communicate with each other?

These can only by a way of private communication, they cannot share official documents via these channels.

(e) Are there any rules governing lay members which relate to the above questions?

Same rules apply for lay judges according to the Ethical Code.

(f) If the answer to any of the above questions is positive, how is it used, are there any other limitations to its use and have there been any problems with its use?

See above, no real problems occurred yet, although it happens sometimes that judicial employees receive messages to their social media account from the parties.

It happened in the past that judges shared inappropriate information using social media, e.g. in the divorce case of a celebrity the judge shared some details of the case and her opinion on a public forum. Although she used a nickname when posting the information she was easily identifiable.

(g) If there is a judicial code of ethics applying to judges and/or lay members, do these relate to issues arising out of the use of the social media? If so, please describe them.

See above.

[14] Do judges, yourself included, consider the social networks, internet or the media in general a legitimate method of learning about disputes which are being litigated before your court?

Surely judges face information in the media about their own cases. Sometimes one even can find recordings of the trial done with a "hidden" camera.

(a) Will you read a newspaper or internet article about a dispute being litigated in your court?

It depends on the judge if he/she wants to obtain information from such source - taking into consideration that in some cases the picture of the court is not positive in the media.

(b) May an attorney arguing a case in your court refer to information appearing in the social media, internet or the media? Will it be given any importance in your opinion?

According to our procedural rules any evidence can be admitted by the judge and every evidence is taken into consideration according to its relevance in the case.

May an attorney ask a witness a question on cross examination based on such an information appearing in the social media, or a media article or any item published in the internet?

Yes, if the question is relevant in the case.

[15] Do you feel that the social media or the social networks have any influence on the hearings or judgements of your court?

No.

[16] Does your country have a general rule of "sub-judice" and is it enforced?

No.

(a) Does your country have laws and/or regulations regulating social media's relationship to the court system, and the labour courts in particular? If yes, please describe them?

(b) If there were any judgments on this subject please describe them.

[17] Has the social media influenced the transparency of your court?

Every court has a public website and some courts have a facebook account where they share information with the clients and the citizens.

The central website of the court system [birosag.hu](http://birosag.hu) is also available in English. On this site citizens can find many useful information about the court system and they can access our new applications, for example a calculator which estimates the delivery time of civil cases on given courts according to the subject of the cases.

(a) Regarding public access to information about your court?

Yes, as many information that in the past have only been published on paper is now available online.

(b) Does your court have a site on social media? On Facebook, twitter or a similar site?

Many courts have facebook accounts.

(c) Does your court have an Internet site open to the public?

Every court has one.

Give a brief description of the type of information the public can obtain on this site.

On the central website there are general information about the court system, direct links to the websites of the courts, press releases of the courts in ongoing cases, FAQ for court clients (with document samples helping them to prepare their motions), practical information about our nationwide programs (e.g. witness care program, court mediation, open court program), information about vacant positions and application procedures, database of civil organizations and database of court decisions (both are free to access), etc.

What are the languages of the site?

The central website is in Hungarian and English, the court websites are in Hungarian.

Are the judges' and lay members legal ethics published on the site?

The Ethical code is published both in English and Hungarian.

<http://birosag.hu/en/code-judicial-conduct>

Are decisions of disciplinary hearings concerning judges or lay members published on the Courts' internet site?

No.

(d) Does the public have access on the social media to hearings in your court?

No, but in those cases which the public is interested in after finishing the hearing the court publishes the relevant information on its website.



(e) Is it permissible to record or film hearings in a Labor Court? If yes, is it permissible for a party to a hearing or a person attending a hearing to record the hearing and then post it on the social media?

On any public hearing it is allowed to take pictures or record a film according to the orders of the judge (e.g. without disturbing the hearing). The court protects the personal rights of the clients, so if they make a statement that they do not want to be recognizable on the records the maker of these must respect this statement.

Can the court protocol or evidence be posted on the social media?

No, the protocol and the evidence are only available for the parties.

(f) Are there limits to what the public, judges, lay members or parties can say in the social media about Labour Court judges and/or about the way the judges conducted a hearing or court judgments?

The same rules apply for this as in general, see above.

Have there been any charges of contempt of court relating to information appearing in the social media?

There is no such offence in Hungary, as "contempt of court".

(g) Given the open character of the social media and the difficulty to control information appearing on it, is it still possible:

(1) To conduct some hearing "in closed court"?

(2) To prohibit publishing of certain information revealed in a court case. For example: in cases involving sexual harassment,

(3) To prohibit publication of the victim's name or details of the harassment.

There are strict regulations when can the court order a closed hearing (e.g. protection of the victim, top secret data). The judges warn the parties that they are not allowed to share any information they obtained at the closed hearing.

However if the hearing is not closed, any information can go public.

[18] Has the social media or internet been used to monitor judges' work and/or worktime?

No.

Is the social media, especially the internet, used for purposes of setting cases and managing judges' workloads?

No.

[19] Have there been instances when the social media has been involved in revealing internal discussions within judicial panels? Or draft judgments prior to their being signed and delivered to the parties?

What steps were taken to prevent these kind of errors?

No such cases occurred yet.

[20] are there any other issues relating to the relationship between the social media and judicial independence which you would like to mention?

## Ireland

### Report by Kevin Duffy, Chairman of the Labour Court, Ireland

#### I. The Court System in each country

1. Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction.

Also, please relate to the following:

- a) Are the Labour Courts part of the general court system or an independent court system?
- b) Is the administration of the Labour Courts independent of the administration of the general courts?
- c) Does the Labour Court in your country have lay members on its' panels? In all cases? Do they have an equal vote on deciding the outcome of the court's judgment? Are there lay members on the general courts?

#### The courts system in Ireland

The Court system in Ireland is established under the Constitution. It provides that justice shall be administered by judges appointed under the Constitution in courts established by law. Judges are appointed by the President on the advice of the government and they are independent in the exercise of their judicial functions.

The Constitution also provides that limited judicial functions may be exercised by tribunals the members of which are not judges established under the Constitution. The Labour Court in Ireland comes into this category. It is properly described as a specialist tribunal established by law to deal with a range of employment related disputes.

The members of the Labour Court are not 'judges' in the Constitutional sense. They nonetheless exercise judicial functions and must act judicially in the exercise of those

functions. They are also independent in the exercise of those functions in the same way as judges.

The court has full-time 'lay members' who are nominated by the national employer's confederation and the national trade union congress, respectively. They are specialists in employment and industrial relations practice. The ordinary courts do not have 'lay members'

Under the statute which established the Labour court all members have equal voting rights.

The court consists of a chairman, deputy chairmen and ordinary members. It acts by division. Each division must consist of a chairman or a deputy chairman and one employers member and one workers member.

## II. The Independence of the Labour Court System

### 2. How are judges appointed to the Labour Courts? Please relate to the following:

#### a) Who appoints the judges to the various instances of the Labour Courts?

All members of the court are appointed by the Minister for Enterprise, Trade and Innovation

If there is a committee, who sits on the committee?

In the case of the chairman and the deputy chairmen of the court the minister must appoint a person recommended by the Public Appointments Service. That is a statutory body established to select candidates for appointment to all positions in public bodies.

Are there any politicians involved in the appointment process? If so, what is their involvement?

While the Minister makes the appointment the selection process is conducted independently and there is no political involvement in that process.

#### b) What are the qualifications required for people applying to be judges of the various instances of the Labour Courts?

Candidates for appointment must have extensive experience in the application of employment law. While the Act does not stipulate that a professional qualification as an employment lawyer is required it is a desirable requirement.

#### (c) Please describe the appointment process: who can apply? How does one apply?

Posts are advertised publically and any person who has the stipulated qualifications can apply.

Are there tests given? If so, what are they: written, oral, personality? Are there interviews? If so, who does the interviewing?

There is an extensive selection process engaged in. There is an interview, an oral test and a personality test.

As stated above, the process is conducted by the Public Appointments Service.

(d) Are there necessary qualifications to become a judge in the various instances of the Labour Courts? Years of experience as a lawyer? Years admitted to the Bar? Languages spoken and/or understood? Are recommendations submitted? Are candidates required to take a seminar or personality tests?

See answer to questions (b) and (c) above.

(e) Are there different methods of appointing Labour Court judges as compared to judges of other types of courts?

Yes. In the case of the ordinary courts the appointment is made by the President on the advice of the Government. There is a judicial advisory board which submits a list of suitably qualified candidates for judicial appointment to the Government. This is a separate body to the Public Appointments Service.

(f) If your system has more than one instance (trial, appeal, supreme) are there different methods of appointing Labour Court judges for the different instances? If so, please describe the methods.

There is only one Labour Court.

(g) How are the Lay members appointed and who appoints them and for what length of terms?

At present there are eight ordinary members; four nominated by the national employers confederation and four nominated by the trade union congress. They are appointed for three years and can be reappointed any number of times.

### 3. How is the budget of the Labour Court determined? By who or which body?

By the Government department responsible for the court, in consultation with the court.

### 4. Under what circumstances can a judge or lay member be dismissed from office and is this done in practice?

(a) Age -

(b) Misbehavior – are judges subject to disciplinary action, by whom.

(c) Conflict of Interest

(d) Senility, mental disease

In general all members of the Court are subject to a retirement age. It is currently between 65 and 70 depending on when the member was appointed.

A member of the court can be removed by the Minister for stated misconduct, although that has never happened in the history of the court. There is therefore no precedent as to what

type of misconduct could lead to a member being removed. It would obviously have to be extremely serious misconduct which undermined the impartiality of the court or undermined his or her capacity to discharge the duties of their office.

5. Is there an independent body which handles public complaints against the court system, including the judges and the lay members? If so, please provide a short description of this body.

There is no such body

a) Can the public file complaints against the judges?

Yes, Complaints are dealt with by the Chairman of the Labour Court.

6. Who decides which judges hear which each case?

(a) Does any person or body outside the court have any say on which judge hears a specific case?

No. The Chairman of the court has sole authority to assign business to divisions of the court.

(b) Who decides which lay members will sit on each panel?

This is the function of the Chairman of the Court

(c) Does any person or body outside the court have any say on which lay members hear a specific case?

No.

7. Who decides on promotion of judges to higher courts?

Members of the Labour Court are not eligible for appointment to the ordinary courts

### **III. Judicial Ethics, social media and court independence**

8. Are there rules of judicial ethics for the general court judges and the Labour Court judges?

There are no formal rules for the members of the Labour Court although there are well established standards of behavior and conduct that members are expected to observe. A similar position applies in the ordinary courts.

(a) Is there an enforcement procedure for these rules?

The chairman of the Labour Court is responsible for ensuring that members of the court adhere to proper standards in the exercise of their role.

(b) Is there a method whereby judges can ask for rulings about how to act or behave when they have questions about their behavior?

Not formally. Where a member is in doubt they would be expected to consult the Chairman.

(c) Are there rules of judicial ethics for the lay judges?

The same position applies to all members of the Court

9. Are judges and lay members allowed to be active members of political parties? Run for political office? Do private work as arbitrators, mediators, attorneys?

No.

a) Are judges and lay members allowed to participate in any fashion in political or social public demonstrations, such as marches, rallies, protests, etc.?

No.

10. Are there limitations on the ability of judges or lay members to express themselves in public lectures? In the media? To appear on television or radio?

It is not considered permissible for members of the Court to give media interviews on matters relating to the court. Members can give public lectures on general topics but may not refer to particular cases in which they were involved.

11. Have there been any court cases in your country regarding the independence of the Labour Courts or judicial ethics?

No.

Have there been any claims by labour unions or management organizations that the Labour Courts are not independent or are influenced in any way by politicians' or political motives?

No.

12. Has there ever been instances of people or bodies who have attempted to influence a judgment of your court?

No.

Has there ever been "political" influence on your Labour Court system from outside your country, such as from EU, UN or ILO bodies? This does not refer to the EU court system or the European Courts, but to political influence from outside your country by international unions or employer associations, foreign embassies, international sports associations, etc.

No.

#### **IV. Social Media and the Courts**

13. Are judges and lay members allowed to use the social media?

No. not in respect of court business.

(a) Can and do judges have connections thru the use of Facebook, tweeter and similar social media?

No.

(b) Can and do they have blogs or web pages?

No.

Are there limits to the extent of personal information which judges or lay members are permitted to publish on social media? For example, can they state their private telephone number and address, spouse name and place of work, marital status, and sexual preference?

There is no restriction on purely personal matters

(c) Can and do they put pictures of themselves on the social media and use social media like Facebook, Tweeter, and Instagram?

See answer above

(d) Can and do judges use any of the above social media forms to communicate with each other?

No.

(e) Are there any rules governing lay members which relate to the above questions?

There are no formal rules on this subject but there is a well-established and understood custom and practice.

(f) If the answer to any of the above questions is positive, how is it used, are there any other limitations to its use and have there been any problems with its use?

Not applicable

(g) If there is a judicial code of ethics applying to judges and/or lay members, do these relate to issues arising out of the use of the social media? If so, please describe them.

There is no formal code but the limitations are well understood

14. Do judges, yourself included, consider the social networks, internet or the media in general a legitimate method of learning about disputes which are being litigated before your court?

(a) Will you read a newspaper or internet article about a dispute being litigated in your court?

No. or if they do they would not be influenced by it.

(b) May an attorney arguing a case in your court refer to information appearing in the social media, internet or the media? Will it be given any importance in your opinion?

Cases must be decided on evidence adduced in open court. Such information is not admissible as evidence

- (c) May an attorney ask a witness a question on cross examination based on such an information appearing in the social media, or a media article or any item published in the internet?

Yes, any question that is relevant to the case may be asked in cross examination. The answer is evidence but the information prompting the question is not.

15. Do you feel that the social media or the social networks have any influence on the hearings or judgements of your court?

No, I do not believe that it would influence the outcome.

16. Does your country have a general rule of "sub-judice" and is it enforced?

- (a) Does your country have laws and/or regulations regulating social media's relationship to the court system, and the labour courts in particular? If yes, please describe them?

There are no such rules.

- (b) If there were any judgments on this subject please describe them.

Not applicable

17. Has the social media influenced the transparency of your court?

- (a) Regarding public access to information about your court?

The court has a website in which information about the court is published. Also copies of all decisions of the court are published on the website. Apart from that the court does not use social media.

- (b) Does your court have a site on social media? On Facebook, twitter or a similar site?

No.

- (c) Does your court have an Internet site open to the public?

See answer to (a) above

Give a brief description of the type of information the public can obtain on this site.

Information is provided on the procedures of the court, how a case is processed, how to initiate a case and the appropriate forms are provided. All decisions of the Court are published on the website.

What are the languages of the site?

Irish and English

Are the judges' and lay members legal ethics published on the site?

No



Are decisions of disciplinary hearings concerning judges or lay members published on the Courts' internet site?

This has never arisen

(d) Does the public have access on the social media to hearings in your court?

No.

(e) Is it permissible to record or film hearings in a Labor Court? If yes, is it permissible for a party to a hearing or a person attending a hearing to record the hearing and then post it on the social media?

Recording of hearings is not permitted.

Can the court protocol or evidence be posted on the social media?

The evidence in every case is recorded in the decision which is published on the website.

(f) Are there limits to what the public, judges, lay members or parties can say in the social media about Labour Court judges and/or about the way the judges conducted a hearing or court judgments?

It would be regarded as unethical for a member of the court to use social media in that way.

No. there is no legal constraint on what the public can say about the Court,

Have there been any charges of contempt of court relating to information appearing in the social media?

The laws relating to contempt of court do not apply to the Labour Court

(g) Given the open character of the social media and the difficulty to control information appearing on it, is it still possible:

(1) To conduct some hearing "in closed court"?

No such problems have been encountered.

(2) To prohibit publishing of certain information revealed in a court case. For example: in cases involving sexual harassment,

This can be a problem but the court can exclude the public during part of a case and does where particularly sensitive evidence is taken.

(3) To prohibit publication of the victim's name or details of the harassment.

The court cannot order restriction on the publication of this information but it can exclude the press and the public from part of a hearing.

18. Has the social media or internet been used to monitor judges' work and/or worktime?

No.

Is the social media, especially the internet, used for purposes of setting cases and managing judges' workloads?

No.

19. Have there been instances when the social media has been involved in revealing internal discussions within judicial panels? Or draft judgments prior to their being signed and delivered to the parties?

No.

What steps were taken to prevent these kind of errors?

It does not arise.

20. Are there any other issues relating to the relationship between the social media and judicial independence which you would like to mention?

No

## Israel

**Report by Steve Adler, President (retired), Israel National Labour Court**

### **I. The Court System in each country**

1. Describe briefly the court system in your country, including the place of the Labour Courts in the court system, including their structure and jurisdiction.

The Israeli General Court System (hereinafter: The General System) is three tiered. The lowest tier is comprised of several Trial Courts- which hear both civil and criminal cases. Some Trial Courts have a specialization, such as the Family Court or Traffic Court. The second tier is comprised of six District Courts, each serving as Court of Appeal for cases arriving from the Trial Courts- and as a court of first instance in both civil and criminal cases- based on its subject matter jurisdiction. In addition, it has jurisdiction over administrative cases. The District Courts also have residual jurisdiction, meaning, they have jurisdiction in any matter not within the jurisdiction of the Trial Courts and which is not within the sole jurisdiction of another court. The third and highest tier is the Supreme Court, which serves both as an Appellate Court for criminal, civil and administrative cases arriving from the District Courts and as the High Court of Justice, where it presides over petitions mostly regarding the State authorities. The Supreme Court- in either of its functions- is the highest judicial instance in Israel, and its rulings are binding upon every court, other than the Supreme Court itself. Alongside the General System there are specialized courts- such as Labour Courts and Religious Courts, each having a specific authority over particular matters.

Also, please relate to the following:

- a) Are the Labour Courts part of the general court system or an independent court system?

The Labour Court System is an integral part of the Israeli Judicial System and incorporated in it, although it differs from the General System in some aspects, e.g. as it follows separate procedural rules and the bench is composed of professional judges and lay members.

In terms of its structure- it consists of two instances- the trial level and the appellate level. There are five regional courts at the trial level, operating in the following districts: Jerusalem, Tel Aviv-Jaffa, Haifa, Nazareth and Be'er Sheva. These courts hear cases in the following fields: social security, labour disputes- including Individual labour disputes and collective labor disputes- and criminal proceedings – dealing with the criminal aspects of statutes related to labour law. The appellate court is the National Labor Court, sitting in Jerusalem. In addition to being an appellate court for the five regional courts, the National Labor Court serves as a court of first instance for suits between parties, who are sides to a general collective agreement; and suits between workers' unions and employers' unions, rising from work relations. The National Labor Court's rulings cannot be appealed, but are subject to the Israeli Supreme Court's review- sitting as the High Court of Justice- which only rarely overrides them. Rulings of the National Labor Court in criminal cases may be appealed to the Supreme Court, upon receiving the Supreme Court's permission.

- b) Is the administration of the Labour Courts independent of the administration of the general courts?

The Labour Courts are administrated by the Directorate of Courts. The Directorate of Courts also administrates the General System. The Directorate of Courts is headed by the Manager of Courts.

- c) Does the Labour Court in your country have lay members on its' panels? In all cases? Do they have an equal vote on deciding the outcome of the court's judgment? Are there lay members on the general courts?

As mentioned above, the panel of judges in the Labour Courts- unlike any other court in the General System- includes both professional judges and lay members. One is a workers' representative and the other is an employers' representative- sitting as part of the panel, alongside the judges, in all cases but criminal. Lay members are not

necessarily jurists but have special expertise in the field of work relations, and are appointed based on their skills and competence. Usually, aside from criminal cases, the National Labor Court sits in a panel of five: three judges and two lay members. The regional courts' hearings are held by a panel of three: one professional judge and two lay members. Once they are part of the panel, the lay members are considered full members- with equal vote. They will be called for every hearing in the relevant case; they may write a separate decision- siding or objecting to the professional judge's opinion; may request a panel's discussion in order to form their decision, before the verdict is given; and are entitled to see every document that is accepted to the court's file.

## II. The Independence of the Labour Court System

### 2. How are judges appointed to the Labour Courts? Please relate to the following:

#### a) Who appoints the judges to the various instances of the Labour Courts?

All judges in Israel, in all instances, are appointed by a formal committee- the Judges' Election Committee, acting according to the following laws: the Basic Law: Judiciary, the Courts Law [Consolidated Version], 5744-1984 and the Labour Court Law, 5719-1969 (hereinafter: The Committee). The Committee consists of nine members, representing all three governmental branches, as well as the Israeli bar association. The executive branch is represented by the Minister of Justice, who heads the Committee, and an additional minister of the cabinet. When it comes to appointments to the Labour Courts, this additional minister is the Minister of Economy. The legislative branch is represented by two members of the Knesset (the Israeli Parliament) elected by the Knesset. The judicial branch is represented by three of the Supreme Court judges- one of whom is its president. The Bar Association is represented by two of its members. Each member of the Committee has one vote- which he or she must cast based on their personal discretion, without being bound by the decisions of the body they represent. Candidates are chosen once a majority of the Committee members, who participated in the election process, approves them. Upon being elected by the Committee, the formal appointment of the judges is carried out by the President of the State.

#### b) What are the qualifications required for people applying to be judges of the various instances of the Labour Courts?

In order to be qualified for a position of a judge of the Labour Courts- both to the Regional and the National- the candidate must be an Israeli citizen, who is inscribed- or entitled to be inscribed- as a member of the Israeli Bar, and served- continuously or intermittently - at least seven years, three of which in Israel- as a lawyer; or taught law at a university or a higher school of learning. It should be noted that these are

the same qualifications that apply to a candidate for the position of a District Court judge.

c) Please describe the appointment process: who can apply? How does one apply?

Are there tests given? If so, what are they: written, oral, personality?

Are there interviews? If so, who does the interviewing?

Any individual who meets the requirements stated above may apply for the position of a judge in the Labour Courts. In addition, a candidate for the position of judgeship may be proposed by the Minister of Justice, the President of the Supreme Court or any three members of the Committee. The applicant must fill in and send to the head of the Directorate of Courts a detailed questionnaire and add his academic transcripts, recommendations, his curriculum vitae and any other documents he wishes to present to the Committee for its consideration. Once the request is received, the application is being thoroughly examined, and if the applicant is found eligible, he or she is called for an interview before a Sub-Committee of the Committee, headed by one of the Committee's judges (hereinafter: the Sub-Committee). The sub-committee will evaluate the candidate, and present its findings to the Committee. Part of the evaluation of the Sub-Committee includes sending candidates to a one week group evaluation. This evaluation is carried out by judges, who examine the candidates' various capabilities, such as written, oral, as well as their personality. The results of this evaluation are brought to the attention of the Committee.

d) Are there necessary qualifications to become a judge in the various instances of the Labour Courts? Years of experience as a lawyer? Years admitted to the Bar? Languages spoken and/or understood? Are recommendations submitted? Are candidates required to take a seminar or personality tests?

See sections (b) and (c).

e) Are there different methods of appointing Labour Court judges as compared to judges of other types of courts?

The only difference, as discussed above, is that the second cabinet member, which participates in the Committee's decision making process with regard to the appointment of Labour Courts' judges, is the Minister of Economy.

f) If your system has more than one instance (trial, appeal, supreme) are there different methods of appointing Labour Court judges for the different instances? If so, please describe the methods.

No. There are not any differences.

g) How are the Lay members appointed and who appoints them and for what length of terms?

The lay members are appointed by the Minister of Justice and the Minister of Economy, after consulting with the Consultative Committee- which is a standing committee specially set up for this purpose, headed by a retired Labour Court judge- based on their skills and competence (hereinafter: The Consultative Committee).

### 3. How is the budget of the Labour Court determined? By who or which body?

The budget for the Labour Courts is determined by the Directorate of Courts, in consultation with the President of the National Labour Court.

### 4. Under what circumstances can a judge or lay member be dismissed from office and is this done in practice?

#### a) Age

As for judges- once a judge reaches the age of 70, he must retire.

As for lay members- once they reach the age of 75, they must retire.

#### b) Misbehavior – are judges subject to disciplinary action, by whom

As for judges- they are subjected to disciplinary action, adjudicated by the Disciplinary Court for Judges (hereinafter: the Disciplinary Court), which consists of judges or retired judges. In addition, the Committee may vote for a removal from office of a judge due to misconduct. These proceedings will be initiated by the Minister of Justice.

As for lay members- complaints regarding misbehavior are adjudicated by the Consultative Committee. The findings of the Consultative Committee in such proceedings may be grounds for disciplinary action taken against the lay member. Such disciplinary action is taken by the Ministers of Justice and Economy, in association with the President of the National Labour Court, and may include removal from office.

#### c) Conflict of Interest

As for judges- a judge may be excused from adjudicating a case because of conflict of interest, but not be removed entirely from office.

The same rule applies to lay members.

#### d) Senility, mental disease

As for judges- a judge will be removed from office if the Committee decided- based on a medical opinion- that due to his medical condition, he is unable to continue to perform his duties. Such medical condition may include mental disease or senility.

As for lay members- it seems that in cases of senility or mental disease the Minister of Justice and the Minister of Economy have the power to discontinue the nomination of a lay member.

5. Is there an independent body which handles public complaints against the court system, including the judges and the lay members? If so, please provide a short description of this body.

a) Can the public file complaints against the judges?

The public may file complaints concerning judges' misconduct to the Ombudsman's Office of the Israeli Judiciary. Said misconduct may include the use of offensive language in courts' decisions or during a hearing; misconduct outside the court; and complaints regarding the manner in which the trials are conducted, such as unreasonable prolongation of proceedings. The Ombudsman's purpose is to improve the unique service supplied by the judiciary, while maintaining judicial independence. The Ombudsman investigates these complaints, and is authorized to recommend reprimands, to suggest how future conduct should be improved and in severe cases to recommend the removal of a judge from his or her office.

As for lay members- see section (b).

6. Who decides which judges hears which each case?

The president of each court, or his deputies, will determine which judge- or panel of judges, if required- will hear which case. If the president did not assign the cases to specific judges, the cases will be allocated to the different judges of that court randomly by a computerized system.

a) Does any person or body outside the court have any say on which judge hears a specific case?

No.

b) Who decides which lay members will sit on each panel?

Usually, the lay members are allocated to panels in random order. The presidents of the Labour Courts have the discretion to allocate lay members to a panel- due to a lay member's special expertise.

(c) Does any person or body outside the court have any say on which lay members hear a specific case?

No.

7. Who decides on promotion of judges to higher courts?

The Committee does. In addition, the Minister of Justice, in consultation with the Minister of Economy, and with the consent of the appointed judge and president of the National Labour

Court, may appoint temporarily a judge of a regional labour court to the National Labour Court.

### III. Judicial Ethics, social media and court independence

#### 8. Are there rules of judicial ethics for the general court judges and the Labour Court judges?

Yes. The Code of Ethics for Judges, 5767-2007 (hereinafter: The Code, or The Code of Ethics) applies to judges of all courts in the Israeli judicial system.

##### a) Is there an enforcement procedure for these rules?

Yes, there is. Breaching the Code may result in filing a complaint against the judge to the Disciplinary Court.

##### (b) Is there a method whereby judges can ask for rulings about how to act or behave when they have questions about their behavior?

Yes. The Ethics Committee- a three judges' panel, appointed by the president of the Supreme Court- is authorized to give preliminary opinions on issues raised by the judges (hereinafter: the Ethics Committee). Its opinions are published.

##### c) Are there rules of judicial ethics for the lay judges?

Yes.

#### 9. Are judges and lay members allowed to be active members of political parties? Run for political office? Do private work as arbitrators, mediators, attorneys?

As for judges- they are not allowed to be active members of political parties, and are not allowed to participate in events held by a political party or other political bodies. In general, they are also not allowed to do any private work, including serving as arbitrators, mediators or acting as attorneys.

As for lay members- there is no prohibition for lay members to be members of political parties. However, according to the Rules of Judicial Ethics for Lay Members, lay members should refrain from using their title- as lay members in the Labour Courts System- for activities not relating to the function of being a lay member, including political activities. As for engaging in private work, they may work as arbitrators and mediators, but not in cases that are in the Labour Court's jurisdiction, unless they are appointed to do so by the Labour Court itself. In any event, they are prohibited from practicing as attorneys in any of the Labour Courts.

##### a) Are judges and lay members allowed to participate in any fashion in political or social public demonstrations, such as marches, rallies, protests, etc.?

As for judges- no. They are not allowed to participate in any fashion in political or social public demonstrations.

As for lay members- they are not allowed to participate in public demonstrations.



10. Are there limitations on the ability of judges or lay members to express themselves in public lectures? In the media? To appear on television or radio?

As for judges- generally speaking, judges are not allowed to appear on television or radio. The Directorate of Courts has a spokesperson, who is in charge of the communication with the press. According to the Code of Ethics, a judge speaks through judgments and decisions, and is usually not interviewed, and shall refrain from appearing in or being interviewed by the media. A judge shall make an appearance or participate in an interview in the media – including in newspapers, radio, television, internet, press conferences and any other way – only with the permission of the President of the Supreme Court, given in advance. It should be noted that this prohibition does not apply to legal periodicals which are published by academic institutions or by the Israel Bar, provided that the judge has received the permission of the President of the Supreme Court in advance. With regard to giving lectures, the Code of Ethics states that a judge may lecture, once in a while, in the framework of a non-commercial organization. It also states that in doing so the judge shall act with the proper level of caution that his status requires, while maintaining a balanced approach and refraining from a polemic tone or expression of an opinion on a matter which is not mainly legal and is the subject of public debate.

As for lay members- they are allowed to express themselves in public lectures, in the media, television or radio. In doing so, they must conduct themselves in an appropriate manner. However, they may not discuss issues arising from cases that were adjudicated before them with anyone, including the media. They are also not permitted to share the views and positions expressed by the other members of the panel, nor criticize them- before or after the decision in the relevant case have been made. Also, they are not allowed to publicly express themselves on matters which are controversial.

11. Have there been any court cases in your country regarding the independence of the Labour Courts or judicial ethics?

Not familiar with such cases.

Have there been any claims by labour unions or management organizations that the Labour Courts are not independent or are influenced in any way by politicians' or political motives?

Yes. Employers and Employers' Organizations sometimes argue that the Labour Courts favor employees. It should be mentioned that in 2003 a public committee was appointed in order to inspect various aspects of the Labour Court System. This public committee found that the Labour Courts have gained the trust of both parties to disputes brought before them, and are regarded as an appropriate and reliable legal forum.

12. Has there ever been instances of people or bodies who have attempted to influence a judgment of your court?

Not familiar with such cases.

Has there ever been "political" influence on your Labour Court system from outside your country, such as from EU, UN or ILO bodies? This does not refer to the EU court system or the European Courts, but to political influence from outside your country by international unions or employer associations, foreign embassies, international sports associations, etc.

No.

#### IV. Social Media and the Courts

13. Are judges and lay members allowed to use the social media?

As for judges- yes. In September of 2012 the issue was analyzed by an advisory committee, which researched the issue of judges' use of online social networks (hereinafter: the Advisory Committee). The Advisory Committee published its recommendations in 2013, according to which judges should not be barred from using the online social networks. Rather, the Advisory Committee aimed to set some guidelines for proper use thereof. Among other things, the Advisory Committee suggested that judges will not use their judicial title while using these networks, as the use of the social networks is private in nature, and should have no involvement with the judge's professional life. It also recommended that judges will not be able to log on these social networks from their office, but will only be able to do so from their homes, in order to set a clear boundary between their judicial activity and private activity on the social network. The Advisory Committee further suggested that the judges will attend a seminar, where they will be familiarized with the dangers of using social networks, and learn how to limit the exposure of private information via these networks. It was also stated by the Advisory Committee that judges should continue to follow the ethical rules they are bound by in their day-to-day behavior even in the virtual sphere, including refraining from posting a picture or a status that may harm their professional image or the public's trust in the Judiciary. In addition, even via the social network, the judges will be prohibited from making political expressions or support others' political views; they should not communicate via social networks about pending cases; or use these networks to gain information regarding these cases, the parties and the witnesses appearing in front of them.

As for lay members- yes. However, they are required to use discretion, and conduct themselves in an appropriate manner while making public expressions.

- a) Can and do judges have connections thru the use of Facebook, twitter and similar social media?

Yes, subject to the stipulations mentioned above.

- b) Can and do they have blogs or web pages?

Usually, no. The reason for this being that the Code of Ethics prohibits judges from expressing an opinion on a matter which is not essentially legal and which is the subject of public debate. However, the Code does allow for judges to publish books and articles, and this may also apply to blogs and web pages. In doing so, the judge should exercise caution, and generally refrain from stating there that he is a judge.<sup>1</sup>

Are there limits to the extent of personal information which judges or lay members are permitted to publish on social media? For example, can they state their private telephone number and address, spouse name and place of work, marital status, and sexual preference?

As for judges- publication of personal information is allowed only if it does not endanger the special status of the judge and the judiciary as a whole.

As for lay members- there are no limitations on the extent of personal information they are permitted to publish on social media.

- c) Can and do they put pictures of themselves on the social media and use social media like Facebook, Tweeter, and Instagram?

- d) Can and do judges use any of the above social media forms to communicate with each other?

- e) Are there any rules governing lay members which relate to the above questions?

The Rules of Judicial Ethics for Lay Members, governing the lay members' behavior, do not address these issues specifically, though they do stipulate that lay members are expected to act in a proper and respectable manner due to their position. This should also apply to their conduct in the virtual sphere.

- f) If the answer to any of the above questions is positive, how is it used, are there any other limitations to its use and have there been any problems with its use?

There are not known problems concerning the use of social media for judges and lay members.

- g) If there is a judicial code of ethics applying to judges and/or lay members, do these relate to issues arising out of the use of the social media? If so, please describe them.

As for judges- the Code of Ethics does not explicitly relate to issues arising out of the use of social media. However, the general principles in it should be applied also when using social media. Specific issues arising from such application was discussed in the recommendations of the Advisory Committee, set out in 2012 (see answer 12 above).

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<sup>1</sup>.(08/93/א) 21.8.08 בהתאם לאמור בהחלטת ועדת האתיקה מיום

As for lay members- the Rules of Judicial Ethics for Lay Members do not explicitly relate to issues arising out of the use of social media. However, the general principles in it should be applied also when using social media.

14. Do judges, yourself included, consider the social networks, internet or the media in general a legitimate method of learning about disputes which are being litigated before your court?

The Israeli legal system is mostly an adversarial one, meaning the parties are responsible to present the relevant evidence before the court, and the judges are not supposed to initiate searches in order to discover related information on their own. Therefore, in general, social networks, facebook or the media are not a legitimate method for learning about disputes which are being litigated before the court.

a) Will you read a newspaper or internet article about a dispute being litigated in your court?

There is no reason why not to read such an article. The judge is also part of the society, and therefore is not banned from reading newspapers or surfing the internet.

b) May an attorney arguing a case in your court refer to information appearing in the social media, internet or the media? Will it be given any importance in your opinion?

Yes. The parties may refer to data appearing in social media, internet and the media, and ask to present it to the court. The issue of the weight of said information and its admissibility will be decided by the court, in accordance with evidence rules.

c) May an attorney ask a witness a question on cross examination based on such information appearing in the social media, or a media article or any item published in the internet?

Yes. As stated above- the lawyer may do so, as long as the information referred to is admissible to begin with.

15. Do you feel that the social media or the social networks have any influence on the hearings or judgements of your court?

No. the judges are professionals, and remain objective. Their rulings are based on evidence.

16. Does your country have a general rule of "sub-judice" and is it enforced?

The rule exists with regard to criminal cases. However, it is hardly ever enforced due to the fact it has to be proven that the individual that published any information regarding a criminal

case that is still being litigated, did so with the intention to influence the case or its final result.

a) Does your country have laws and/or regulations regulating social media's relationship to the court system, and the labour courts in particular? If yes, please describe them?

No.

b) If there were any judgments on this subject please describe them.

Not familiar with such cases.

#### 17. Has the social media influenced the transparency of your court?

Yes. People write about cases and trials they have knowledge about.

a) Regarding public access to information about your court?

Yes.

b) Does your court have a site on social media? On Facebook, twitter or a similar site?

No.

c) Does your court have an Internet site open to the public?

In the website of the Judicial Authority ([www.court.gov.il](http://www.court.gov.il)): bulletin board; general information regarding the court system; decisions of the Supreme Court; court calendar for all courts; information regarding the Ethics Code and the Ethics Committee; Information about the parole board; guidelines issued by the president of the Supreme Court and the Head of the Directorate of Courts; information regarding past inquiry committees; information regarding judges' Election Committee; links to various websites; links to useful information, such as forms, court fees, job offers in the system, etc.; CVs of judges- in the entire Court System; research information; a link to the Labour Courts System's website.

In the Labour Courts website (<http://elyon1.court.gov.il/heb/avoda/AvodaHomePage.htm>): general information regarding the system; useful information; various forms; information regarding court fees; guidelines made by President of the National Labour Court; information regarding the judges in this system; information about lay members and medical experts- lists of names, ethics rules, procedures, etc.; links to other websites; etc.

What are the languages of the site?

Judicial Authority's website: Hebrew (as specified above), English (partial information), Arabic (partial information).

Labour Courts System's website: Hebrew only.

Are the judges' and lay members legal ethics published on the site?

Yes. The Ethics Code may be found in the Judicial Authority's website; the Rules of Judicial Ethics for Lay Members may be found in the Labour Courts System's website.

Are decisions of disciplinary hearings concerning judges or lay members published on the Courts' internet site?

The decisions of the Disciplinary Court for Judges are published in the Court's website.

d) Does the public have access on the social media to hearings in your court?

No.

e) Is it permissible to record or film hearings in a Labour Court? If yes, is it permissible for a party to a hearing or a person attending a hearing to record the hearing and then post it on the social media?

The court may accept a party's request to record a hearing, on the party's expense. If the court granted the request, and allowed for the hearing to be recorded, the recording will be kept by the court, and any party to the case will be able to listen to it. It should be noted that this recording of the hearing will not replace the formal protocol written by the court during the hearing. There is no reference to the issue of sharing the recording via social media, though it seems that as the recording is kept by the court, and is not in any of the parties' possession, such sharing is prohibited. As for filming hearings in the Labour Court or photographing inside the courtroom- this is not permitted.

Can the court protocol or evidence be posted on the social media?

Yes. In any event, these postings are subject to limitations such as gag order.

(f) Are there limits to what the public, judges, lay members or parties can say in the social media about Labour Court judges and/or about the way the judges conducted a hearing or court judgments?

Yes. Both judges and lay members are prohibited from discussing the way the judges conducted the hearings; the views they expressed while the panel was deliberating; or the final decisions.

As for the public- the limits will be defined according to the principle of freedom of expression. It should be noted that the Israeli criminal law prohibits the public from expressing negative criticism regarding the judges' performance, as long as such expression is done with the intention to harm the judges' status, or degrade the adjudicative process.

Have there been any charges of contempt of court relating to information appearing in the social media?

Not familiar with such cases.

g) Given the open character of the social media and the difficulty to control information appearing on it, is it still possible:

1) To conduct some hearing "in closed court"?

2) To prohibit publishing of certain information revealed in a court case. For example: in cases involving sexual harassment,

3) To prohibit publication of the victim's name or details of the harassment.

Yes to all of the above. The court can conduct some hearings "in closed court"; prohibit publishing of certain information revealed in a court case; and prohibit publication of the victim's name or details of the harassment- however, it will probably be more difficult to enforce these prohibitions.

18. Has the social media or internet been used to monitor judges' work and/or worktime?

No.

Is the social media, especially the internet, used for purposes of setting cases and managing judges' workloads?

No.

19. Have there been instances when the social media has been involved in revealing internal discussions within judicial panels? Or draft judgments prior to their being signed and delivered to the parties?

No.

What steps were taken to prevent these kind of errors?

Not familiar with such cases.

20. are there any other issues relating to the relationship between the social media and judicial independence which you would like to mention?

No.

## Italy

**Report by Francesco Centofanti, Member of the Panel and Judge Filippo Curcuruto, President, Labour Chamber, Appeal Court of Rome**

### **I. The Court System in each country**

1. The Italian judicial system, in civil matters, is divided into a 3 Courts system. The Labour Court system follows the same approach. So, it is based on first instance Courts, located throughout the country (currently, a 130 of them) on Courts of appeal, fewer in number ( 26, approximately one per region) and on a Supreme Court (called Corte di Cassazione), which is in Rome. The first instance judgment is carried out by a single judge; on appeal, there are three judges; in the Supreme Court five judges (or nine for the most important cases).

1a The Labour Courts are part of the general court system and are special sections of the general courts. Their members are ordinary judges, with particular qualifications.

1b No, the administration of the Labour Courts is the same as the general courts.

1c The Labour Courts have no lay members on their panels.

### **II. The Independence of the Labour Court System**

2a The judges in the Labour Courts, like the other ordinary judges, are appointed by the High Council of Judiciary (Consiglio Superiore della Magistratura, CSM). The CSM is a constitutional body, consisting of members elected periodically ( every 4 years). The majority of them ( 2/3) are judges elected by all the judges and the rest ( 1/3) by the Houses of Parliament, in joint session. To be elected this third must be either lawyers or university professor of law. Politicians cannot directly interfere in the appointment process.

2b The judges, who can apply to be appointed in the Labour Courts, are ordinary judges, having advanced knowledge in labor law.

2c Any judge can apply to be appointed as a labor judge. He must apply to the CSM, as soon as a vacancy becomes. There are no tests or interviews. The selection is based on qualifications.

2d The qualifications required to be appointed include the years of experience as a judge. Experience as lawyer or admission to the bar are not considered. Languages spoken, and/or understood, could be an advantage. Recommendations are not submitted. No seminars or personality tests are required.

2e The method of appointing Labour Court judges is the same as the appointment in other types of courts, in accordance with the necessary qualifications.



2f The method of appointing Labour Court judges is the same for all instances. The qualifications required depends on the level of the Court. Given the fact that the Supreme Court bases its judgement only on the law and not on the facts, to become a member of the Supreme Court a great interpretive skill of the law is required. In judging only about the compliance with the law, it is important to show great law interpretation skill.

2g There are no lay members.

2 bis [reported again as 2] The budget of the Labour Courts is part of the administration of justice general budget. The amount of the general budget of the Ministry of Justice is determined by an act of Parliament.

3. A judge is normally dismissed when he reaches the age for retirement. He is also dismissed in cases of serious misbehavior or serious mental or physical illness. Conflicts of interest create an obligation to refrain from judging an individual trial; in this case the judge who doesn't refrain may be refused by litigants. The dismissal, for any reasons, including the disciplinary ones, is decided by CSM. This happens on occasion.

4. The CSM is the body to which the general public may file complaints against court judges. This body, independent from political power, is able to start investigations and to decide on disciplinary measures, if appropriate. The Attorney General may also carry out investigations and may ask CSM to proceed.

5. Each judge hears cases assigned by the head of the court. Nobody else has any say on that. However, it is important to underline that judges are assigned cases (by the head of the Labor Court) on the basis of previously determined criteria; each case being assigned by a random computer selection.

6. CSM decides on promotion of judges to higher courts.

### **III. Judicial Ethics, social media and court independence**

7. The main duties of behavior for the general court judges (impartiality, care, discretion, restraint) are directly imposed by the act of Parliament. Concurring rules of judicial ethics are established by the National Judges Association (Associazione Nazionale Magistrati, ANM), the professional association which the main part of Italian judges freely joins. These duties and rules apply to all judges, including the members of Labour Courts.

7a Judges who break those rules are subject to disciplinary sanctions by CSM.

7b Judges can ask CSM in advance about how to act in issues involving ethical behaviors.

7c Labour Courts have no lay member.

8. Judges are not allowed to be active members of political parties. They may run and be elected in political offices only if they have been previously placed on unpaid leave. They are

not allowed to run a political office in the same place in which they worked before. Judges cannot be appointed privately as arbitrators or mediators nor can they work as attorneys.

8a There isn't an absolute prohibition for the judges from taking part in political or social public demonstrations, but they must always behave with balance and moderation.

9. Within the same limits judges may express themselves in public lectures and in the media (television, radio, etc).

10. In Italy there haven't been court cases regarding the independence of the Labour Courts or judicial ethics, and there haven't been relevant claims on that topic.

11. To the best of our knowledge, there have never been instances of anybody, inside or outside the country, who has attempted to influence the decision of a case by our court.

#### **IV. Social Media and the Courts.**

12. Judges are allowed to use the social media in private.

12a Some of them use Facebook, Twitter, Instagram and similar social media.

12b Some of them have blogs and web pages. There are no limits, if not the general ones, to the extent of personal information which judges are permitted to publish on social media. They can state also sensitive information about themselves.

12c Some judges put pictures of themselves on the social media.

12d Some of them use social media to communicate with colleagues.

12 d-bis As above said, there are no lay judges in Labour Courts.

12e The use of social media by judges is subject to the same rules that apply to every person. No special problems have arisen so far.

12f There aren't rules of judicial ethics especially related to issues arising out of the use of social media.

13. Judges cannot take information about disputes put before them, outside of the dispute itself, except for the facts generally known.

13a We wouldn't read a newspaper or an internet article about disputes which we have to decide.

13b An Attorney arguing a case before our court could refer to information appearing in internet, media or social media, but this does not make the information more believable. An Attorney may normally ask witnesses questions based on information of which the witnesses have direct knowledge; by these limits, the Attorney could ask questions based on such an information appearing on internet, media or social media.

14. We feel that the social media or the social networks have no influence on the hearings or judgments of the courts.

15 Judicial code of ethics forbids judges to comment publicly on cases “sub judice”, also if the case is assigned to another court. This rule is enforced also by disciplinary measures.

15a In our country there is no legal provision concerning social media’s relationship to the court system.

15b No judgments on the above topic have been given until now.

16. Social media don’t normally influence the transparency of our court.

16a-b-c Our court hasn’t a Facebook page or a Twitter account and it is not present on other social media. It has got a website, open to the public, where it is possible to find information such as: the organizational structure, the panels, the hearing days, and similar. The general public and the attorneys can download formats for the instances to submit to the court, from the site. There are links to other sites of interest in the field of justice. The site is only in Italian. Neither the legal ethics of the judge nor the decisions of disciplinary hearings concerning court judges are published on the site.

16d Hearings of our court and of other civil courts as well cannot be seen or heard on the social media.

16e To record or to film an hearing a court permission is needed. But it very rarely happens that someone asks to do so. On the other side nothing would prevent anyone from posting the court protocol or evidence on the social media.

16f There are no limits to what the public, judges and parties can say in the social media about Labour Court hearings and judgments. There haven’t been important cases involving charges of contempt of court, caused by information appeared on social media.

16g In civil and labour matters it is not allowed to conduct hearings “in closed court”. The Court cannot prohibit publishing of information revealed in cases disputed before itself. There are general rules which prohibit the publications of the victim’s name, in some circumstances, and of the details of sexual harassments.

17 Social media and Internet haven’t been used to monitor the work of judges or their worktime. They are not used for the purpose of setting cases and managing judges’ workloads.

18. There haven’t been instances where the social media have been involved in revealing the internal discussion within the judicial panels or the content of draft judgments.

19. In general, there are not special issues to the relationship between the social media and judicial independence.

#### I The Court System in Norway

1)

a) The Norwegian court system consists of general courts and a few specialized courts. The general courts are the district courts (first instance), the courts of appeal and the Supreme Court. With the exceptions set out below, the general courts have jurisdiction in any civil or criminal matter. A decision by the courts of lower instance may be appealed to the courts of appeal and the Supreme Court.

The specialized courts are the land consolidation courts, the Court of Impeachment and the Labour Court. The Labour Court has jurisdiction in matters concerning the existence/validity and interpretation of collective agreements, and claims based on a collective agreement.

As a general rule, there is a right of appeal both on matters of law and on matters of fact.

There is a very limited right of appeal against the judgements of the Labour Court. The decisions of the Labour Court can only be appealed on questions of jurisdiction (whether the Labour Court decided a case concerning a collective agreement or a claim based on the collective agreement); such appeals are to be lodged with the Supreme Court, not the district courts.

Because the Labour Court is a specialized court outside the system of the general courts, we will in our replies to the questionnaire to some extent address the situation for both the general courts and the Labour Court.

b) Yes. There is a Norwegian Court Administration for the general courts and the land consolidation courts. Before the establishment of the Court Administration, the courts were administered by the Ministry of Justice. The purpose of creating a separate court administration was to ensure greater independence from the executive and legislative branches of government, and to enable the courts to deal with challenges presented before them. This is done for instance by providing the support necessary for judges and staff to carry out their roles, for example by carrying out the administrative function and providing various kind of support (IT etc.) for the courts. The Court Administration also holds an employer function towards the judges. The Court Administration cannot instruct the courts or judges in the exercise of judicial functions.

The Parliament sets aims and objectives and draws up the annual budget for the courts and the Court Administration. The Court Administration and the Ministry of Justice hold regular meetings on matters related to allocation of resources and amendments of rules governing the courts. The Ministry of Justice is not in a position to instruct the court administration with respect to specific administrative matters. The Ministry of Justice has main responsibilities for legal consultation papers and legislation related to the courts. The Court Administration may suggest amendments to laws and respond to consultation papers.

The Labour Court is not administered by the Court Administration, but by the Ministry of Labour. The question of transferring the Labour Courts to the Court Administration was discussed when the Labour Disputes -Act was revised in 2012, but the administrative affiliation was not changed, mainly due to the need for cooperation between the Labour Court and the National Mediator. The Ministry of Labour administers both the Labour Court and the National Mediator.

c) Both the Labour Court and the general courts have lay members.

The Labour Court has lay members in all cases; when hearing a case the court has seven members – three judges and four lay members.

The general courts have lay members in certain cases, such as cases concerning dismissals; in the district courts there will be one judge and two lay members and in the court of appeal three judges and two lay members.

Lay members have equal votes, and if the lay members have dissenting opinions, they are published alongside the majority opinion.

## II The Independence of the Labour Court System

2)

a)

Judges of the Labour Court are appointed by the King in council, after a selection process administered by the Ministry of Labour. The ministry will make a recommendation to the King on who is to be appointed to the Labour Court.

In addition to the permanent judges of the Labour Court, there are judges appointed for 3 year terms. These judges are appointed by the King in council after a selection process administered by the Ministry of Labour. These judges are either retired supreme court justices, law professors or appeal court judges.

The appointment procedure is somewhat different for the general courts: The judges in the general courts are appointed by the King in council, but the selection process is administered by the judicial appointments board, a committee established according to the provisions in the Norwegian Court Act (the act relating to the Courts of Justice of 13 August 1915 No . 5) chapter 3. Before the King appoints a judge, he must obtain a recommendation from the appointment committee. The recommendation from the committee is not binding, but if the King is considering appointing an applicant who has not been recommended, a statement shall be requested from the judicial appointments board regarding the applicant concerned. An applicant who is recommended by a minority of the judicial appointments board shall be deemed to have been recommended. The judicial appointments board consists of three judges, one lawyer, one jurist employed by the public sector and two members who are not jurists. The members of the committee are appointed by the King for four years, with the possibility for re-appointment for another four years. The judicial appointments board does not select candidates for appointment as chief justice of the Supreme Court.

b) The Court Act §§ 53 and 54 have provisions on the qualifications for the position as judge. Judges must be Norwegian citizens who are trustworthy and who have not been deprived of their right to vote in respect of public affairs. Supreme Court judges, appellate court chief judges and appellate court judges must be at least 30 years of age and have a law degree. Appellate court judges and district court judges must be at least 25 years of age and have a law degree. According to the Court Act § 55, judges should be appointed among persons who satisfy exacting requirements concerning professional qualifications and personal characteristics. Judges to the Supreme Court, the courts of appeal and the district courts should be recruited from lawyers with varying professional backgrounds.

According to the Labour Court Act § 36, the judges must comply with the same qualifications as judges at the Supreme Court.

c) All vacancies in the courts are advertised in the same way as other vacancies in the public sector. Anyone with the necessary qualifications may apply for the position as judge. An application is filed electronically at the web site for public sector vacancies. The ministry or the committee, and a member of the court where there is a vacancy, will interview the best qualified applicants. There are no written or oral tests.

d) See answer to b) above.

e) See answer to question a) above. The judges in the general courts and the Labour Court are all appointed by the King, but the recommendations for appointment to the Labour Court judges are made by the Ministry of Labour and not the judicial appointment board.

g)

Lay members of the Labour Court are appointed by the King after recommendations made by trade union federations or employers federations. Appointments are made for a period of three years.

2)

The budget for the Labour Court is determined by the Parliament based on a proposal from the Ministry of Labour. The proposal is made in cooperation with the Labour Court.

3)

A judge can only be dismissed after a decision by a court, for reasons of incapacity or if they are unfit to perform their duties. Judges must retire at the age of 70.

In 2013 – for the first time in 100 years – a city court judge was dismissed due to a failure to perform his duty.

See answers to question II.4 below regarding disciplinary actions against judges.

Lay members may be dismissed from office if they no longer qualify for election as lay members, i.e. for having committed a criminal offence or the holding positions that are incompatible with service as a lay member etc. Lay members in the general courts can only be (re)elected as lay members if they are under the age of 70 at the beginning of the election period.

4)

For the general courts, there is a special committee for complaints against judges. In November 2002 the Supervisory Committee for Judges was established. The Committee is an independent, administrative, collegiate body composed of six members: two representatives from the public, two judges, one judge from the Land Consolidation Courts and one lawyer. The members are all appointed by the King in council.

Anyone who has been subjected to an alleged misconduct of a judge in the performance his or her office may bring a complaint against the judge to the Supervisory Committee. This includes parties, witnesses, indicted or barristers. The public can complain if they have been directly affected by the judge's breach of good conduct. The right to complain is also extended to the court president, the National Courts Administration and the Ministry of Justice. The Norwegian Bar Association and others may also lodge a complaint with the Supervisory Committee if they have a special interest in the committee's assessment of the judge's conduct.

The committee may also ex officio consider an alleged misconduct by a judge. A complaint must be forwarded to the Committee within three months from the alleged misconduct took place or was known to the complainant. There is an absolute one-year-limit for bringing in a complaint.

If professional misconduct is revealed, the Committee may criticize the judge's conduct in a reasoned opinion. The Committee may also issue a warning, which is the strongest reaction. The Committee may express its view of what constitutes "conduct as befitting a judge", even if there is no basis for criticism or warning in the case before the committee. In this way the Committee contributes to the development and clarification of what is "conduct as befitting a judge".

The decisions of the Supervisory Committee for Judges are made public in an anonymous form.

Misconduct of judges may be:

- Misbehaviour in duty
- Offence of duties in service
- Misconduct when not in duty

As mentioned above, the committee may issue a warning or express criticism of a judge.

The Committee cannot decide whether or not a judge should be dismissed. In case of a serious misconduct, the Committee may bring this to the attention of the Court Administration. The Court Administration may bring the matter before the Ministry of Justice, and then it is for the King in council to decide upon whether or not the question of dismissal of a judge should be brought before the courts.

5) There is no outside interference with the selection of the judges for a specific case. Cases are distributed between the judges at the court by the chief judge, or on the basis of guidelines issued by the chief judge. As a main rule, judges are assigned to a case based on a principle of random allocation of cases. Exceptions from this principle may be made if this is objectively justified.

6) There is no special procedure for promotion of judges to higher courts. If a judge wishes to serve on a higher court, he or she must apply for a position as part of the ordinary appointment process, and will have to compete for the appointment alongside other applicants.

For judges at the district courts, the Court Act has provisions whereby these judges temporarily may serve as judges at other courts.

### III Judicial ethics, social media and court independence

7) The Court Act § 55 states that judges “shall be independent in his or her judicial activity. Judges shall perform their judicial duties impartially and in a manner which engenders general trust and respect.” This provision has served as a basis for a set of ethical principles on the conduct of judges, issued in cooperation between the Norwegian Association of Judges and the Court Administration. These principles do not apply to the lay members.

The ethical rules are applied by the Supervisory Committee for Judges. A judge cannot ask for a ruling on how to act. As mentioned above, the Committee may comment on what constitutes “conduct as befitting a judge” on a more general basis, even if there is no grounds for criticism of the judge whose acts are under review.

The ethical rules are not directly applicable to judges in the Labour Court, but the general ethical principles will apply.

8)

#### *Judges*

The judges may work as arbitrators etc., and be active members of political parties. Some activities must be authorised by the court administration or be registered. The Court Act chapter 6A has rules on the extra-judicial activities of judges. Extra-judicial activities are “membership of, office or other engagement in or on behalf of companies, organisations, associations or governmental bodies, municipalities or county municipalities”. For certain activities, the judge must apply for authorisation. The Court Act § 121c states:

“A Supreme Court judge or judges sitting in the Courts of Appeal, District Courts or Land Consolidation Courts must apply for authorisation to perform extra-judicial activities.

1 that may, on more than an occasional basis, render the judge disqualified

2 that may obstruct or delay the performance of judicial duties

3 in collegiate administrative bodies, where it is probable that the decision will be brought before the courts for judicial review

4 related to private or public sector business operations

5 related to enquiry

6 in private dispute settlement tribunals and

7 as a member of a court of arbitration

The following exceptions to the need for authorisation apply:

1 election or appointment by the Norwegian Parliament or the King in Council



- 2 election as a Member of Parliament, a Member of the Sami Parliament or as a member of a municipal or county-municipal democratically elected body and
- 3 office in a registered political party.”

There is also a system of registration of extra-judicial activities, including judges’ investments, cf the Court Act § 121e:

”The extra-judicial activities of judges in the Supreme Court, Courts of Appeal, District Courts or Land Consolidation Courts shall be registered. The same applies to information concerning the last position held prior to appointment or engagement as judge.

The following exceptions to registration apply:

- 1. membership of political parties, religious communities, special interest groups and idealistic organisations
- 2. office and suchlike in idealistic organisations with fewer than 100 members and
- 3. isolated speeches, lectures and suchlike

The exceptions stated in the second paragraph nos.1 and 2 do not apply to extra-judicial activities in idealistic organisations whose members are bound by special mutual obligation to each other (brotherhood or sisterhood).

Investments representing ownership interests in companies shall be registered should they exceed a limit stipulated by the King.”

Authorisation is given by the court administration, with the exception of extra-judicial activities of judges in the Supreme Court. Authorisation of the extra-judicial activities of these judges is given by the Chief Justice of the Supreme Court.

The rules of the Court Act are to a certain extent applicable to the Labour Court by a reference in the Labour Disputes Act, but authorisation is given by the Ministry of Labour.

Judges may work as arbitrators etc., but the Court Administration must give authorisation. The guideline is whether such work may conflict with the judge’s ordinary work. Judges may also participate in political discussions or demonstrations. The provisions in the Court Act presuppose that judges may be active members of political parties, and even members of the parliament or serve as ministers.

#### *Lay members*

The rules in the Court Act do not apply to lay members, however, the rules on electability may restrict their extra-judicial activities. For lay members in the Labour court, the Labour Disputes Act states that they may not be members of the board of or employed by a trade union or an employers’ federation.

9)

There are no special restrictions on what a judge may say in lectures, articles etc., other than the general ethical rules. When commenting on cases before or decided by the court, the comments must be within the “conduct befitting a judge”.

10)  
No.

11)  
No.

#### IV Social media and the courts

12)

a and b) There are no special restrictions on the judge's use of social media, at least not within the judge's private sphere. A judge may, as all citizens, use social media for social purposes (connecting with friends and family etc.). For official use, there are inherent limitations. The Supreme Court of Norway uses twitter to send information about ongoing cases, whereas it would be unthinkable (and inappropriate) for a judge to use such media to inform about pending or decided cases.

There is a district court judge who has a blog where he describes his work as a judge. He does not comment on specific cases, but describes different scenarios and types of questions he experiences in connection with his work, such as procedural matters or examples of cases or questions within family law or criminal law. The blog is written in an accessible style, and the purpose is to give the public a better understanding of what the courts and the judges do.

c) There are no special guidelines for judges on the use of social media.

d) If there is any contact between judges outside of work, this may also include the use of social media. Social media is not used for discussing cases before the court.

e) There are no specific rules for the lay members.

f) The Norwegian ethical principles of judicial conduct have no specific provisions on the use of social media. However, any use of social media by a judge must comply with the general ethical principles on judges' conduct.

13) No. Judges may of course be aware of media coverage of a case before the courts, but it does not have any effect on the proceedings.

Information in social media may sometimes be presented as evidence in cases before the courts. In one case before the Labour Court, the question was whether statements made by trade union members on Facebook were an incitement to industrial action. The court made an assessment of the various statements, but it was not decisive. The discussions on the trade union's facebook page were a small part of the evidence before the court only. The court found that there was an incitement to collective action and particular importance was attached to an e-mail from one of the shop stewards, not to statements made on facebook etc.

The Court Act has detailed provision on public access to hearings; hearings are as a main rule public, with exceptions for special cases. In criminal cases there is as a main rule no right to film or record for

“radio or television”, i.e. private recordings are permitted. The judge may decide that the public shall not disclose information from the hearing if there are special grounds for such a restriction.

There are limits as to what judges may say about pending cases, cf. the ethical principles on the conduct of judges. Any discussion or remarks must be consistent with the “conduct befitting a judge”.

The presiding judge in a case oversees that proceedings take place in an orderly and dignified manner. He or she may reprimand any party who disrupts proceedings, makes inappropriate statements or personal attacks, or whose actions in any way impugn the dignity of the court. Statements made in social media can only be reprimanded if they affect the proceedings. So far, there are no examples of this.

14) No

15) There are no rules on this subject.

16) No. See answer to 12.a) above about the Supreme Court’s use of twitter.

17) No.

18) No.

## **Slovenia**

### **Report by Miran Blaha, Judge, Supreme Court of the Republic of Slovenia**

#### **Court system, appointment and dismissal of judge**

Constitution set out the division of powers into legislative, executive and judicial. The Court is a state body responsible for the administration of justice and the enforcement of judgments. Labour Courts are part of the judicial system, but as a specialized courts, responsible for decisions in individual and collective labor disputes. The annual volume of funding for the salaries of judges and other staff of the courts, the operating costs of the courts for their equipment and for the provision of spatial conditions is determined in the state budget adopted by the National Assembly.

In the first instance decide Labor Courts of first instance, on appeals decide the High Labour and Social Court, on appeals and revisions against the decision of the High Court decide the Supreme Court of the Republic of Slovenia. The labor and social disputes decided by a court of first instance in the panel, unless the law specifically provides that a single judge. In labor disputes, the panel of the Court of First Instance shall consist of a profesional judge as president and two lay judges, one of whom is elected by the list of candidates of workers or

insured persons, the second by the list of candidates of employers or institutions. High Labour Court decides in a panel of three judges and in the Supreme Court panel of five judges.

The process of election of Labour Judges is the same as the procedure of election of judges of courts of general jurisdiction.

To judge may be appointed a person fulfilling the following general conditions:

1. is a citizen of the Republic of Slovenia and is fluent in Slovenian language ,
2. has the capability and general health,
3. has attained 30 years of age
4. that in the Republic of Slovenia obtained the professional title of Bachelor of Law degree or in foreign state end comparable education in the field of law,
5. that passed the state exam,
6. has not been convicted of an criminal offense or against him was not initiated criminal proceedings,

A person who meets the general conditions may be elected to the judicial position at the first instance Labor Court if successfully pursued judicial office for at least three years, or has a minimum of six years of work experience in legal work after passing the state exam. A person who meets the general conditions can be elected at the High Labour Court if successfully pursued judicial office for at least six years, or has a minimum of nine years of work experience in legal work after passing the state exam. For the judge at the High Labour Court can be elected also a university teacher of law, fulfilling the general conditions, if elected at least in the title of assistant professor. A person who meets the general conditions may be elected to the judicial position of the Supreme Court if successfully pursued judicial office for at least 15 years or has at least 20 years working experience in legal work after passing the state exam. For the Supreme Court judge may be appointed also a university teacher of law, fulfilling the general conditions, if elected at least the title of associate professor.

Candidates for judicial office filed the application in the Supreme Court of the Republic of Slovenia. The President of the Court, in which vacant judicial position, deliver a reasoned opinion on the suitability of each candidate. Opinion is served to a candidate who may give a reasoned comments. Then the President of the Court shall make a definitive opinion, and may specifically indicate which candidates considered the most suitable to fill the vacancy and to explain the material and the written material and any comments should be sent to the Judicial Council. The Judicial Council is composed of eleven members. Five members are elected on the proposal of the President of the Republic of the National Assembly from among university professors of law, attorneys and other legal professions, six members from among themselves elect judges holding permanent judicial office. Members select a president from among themselves. The Judicial Council in the selection process determine whether candidates have the expertise, personal qualities, skills and abilities required for the performance of judicial service. The selection process may have several phases, so that the candidates progressively eliminated. The Judicial Council in the selection takes into account the written documentation, but can also carry out tests of expertise, personal qualities, abilities and skills which are

necessary for the performance of judicial service, psychological tests and interviews with the candidates who best meet the conditions and criteria for appointment to judicial post. In interviews may be present the President of the Court, in which vacant judicial position. The Judicial Council make the selection within 30 days after obtaining complete documentation. The discussion and voting on each stage of the selection process will be recorded. The Judicial Council in the selection of the candidate is not bound by the opinion of the President of the Court on the adequacy of the candidate and is not obliged to select a candidate who otherwise meets the formal requirements for the advertised judicial position. Notice of non-selection candidate must be explained with the reasons for not selecting a single candidate. If the Judicial Council selects a candidate who is not yet elected as a judge, it is obliged to propose to the National Assembly for election. If the Judicial Council chooses to judicial post the candidate who has been already elected to judicial office, Judicial Council appointed him to the judicial post and transferred to the court in which this place is vacant. The appointment as a Judge of the Supreme Court National Assembly decides.

A judge ceases to hold judicial office under the law:

1. if he do not take an oath at the latest within sixty days from the date of appointment to judicial office;
2. if he loses citizenship of the Republic of Slovenia;
3. if he loses capacity or capability to perform work for medical reasons;
4. if he cancel the Judicial Office;
5. if the elimination of the court the judge can not be guaranteed to continue to perform judicial office at another court;
6. if the judge adopts the function, begins to carry on business or enter into an employment relationship that is incompatible with the judicial function;
7. if from the evaluation of its services he does not correspond to the Judicial Service;
8. if it is a disciplinary sanction of termination of the judicial function.

A judge ceases to hold judicial department when he retire but at the latest after reaching 70 years of age.

If the judge intentionally commits an offense through the abuse of the judicial function, the court must send a final judgment of conviction to Judicial Council. The Judicial Council is obliged, without delay, inform the National Assembly that a judge be resolved the judicial function.

A judge who has intentionally or negligently breached the judicial duties that are prescribed by law and the court order, or infrequently performed the judicial service may impose a disciplinary sanction. The disciplinary proceedings shall decide the disciplinary courts. of first and second instance. Disciplinary Court of first instance is composed of eight judges, two supreme, two higher and two district and two county judge and decide in a particular case in a panel of three judges. The Disciplinary Court of second instance consists of five Supreme

Court judges. Appeals against decisions of the disciplinary court of first instance heard by a panel consisting of a chairman and two judges. Proposal for disciplinary proceedings filed the disciplinary prosecutor who is a Supreme Court Judge. Disciplinary authorities are appointed and dismissed by the Supreme Court of the Republic of Slovenia on the proposal of the Judicial Council.

Lay judge shall be dismissed if recklessly and irregular acting as a lay judge and will be liable for the damage directly caused by neglect or irregular performance of duties.

Lay Judge term of office expires:

1. if he terminate the mandate of a lay judge,
2. if he loses citizenship of the Republic of Slovenia,
3. if the loss of health capability for performance of duties lay judges,
4. if convicted of an offense that is prosecuted ex officio.

### **Impartiality and independence of judges, incompatibility of judicial office**

The judges are in the performance of the judicial function independent. They are bound by the Constitution and Laws. The judge should always behave so as to protect the independence and impartiality of the judges' reputation and independence of the judiciary. A judge is obliged to protect the confidentiality of all information to which the public has no access. A judge may not accept gifts or other benefits in connection with their service. It also should not accept gifts or other benefits in connection with a job and complaining his spouse and other family members, relatives and other persons living with the judge in the same household. The judge must not publicly express in advance of the legal and factual issues that are the subject matter of which is not yet a final decision, or cases in which it was filed some extraordinary remedy.

If the judge elected for a President of the Republic, a member of the National Assembly, Constitutional Court judge, judge of an international court or other international judicial function, the Prime Minister, the Ombudsman or his deputy, appointed Minister or Secretary of State, the President or Deputy President of the Commission for the Prevention corruption, as a Member of the European Parliament, the European Ombudsman or appointed a member of the European Commission, a judicial function, and all rights and duties of the judicial service are suspended. The same applies if the judge seconded to international civilian mission or international organization or perform professional tasks at the International Court of Justice or the Permanent Representation of the Republic of Slovenia in international organizations dealing with human rights.

A judge shall not engage lawyers or notary operations or business or other gainful activity may not be a manager or a member of the administrative or supervisory board of the company or other legal entity that is engaged in gainful activity. A judge shall not accept any employment or work that would interfere with the performance of Judicial service or contrary to the reputation of the Judicial service or conveys the impression that in the performance of his duties is not impartial. A judge may engage in educational, scientific, journalistic, research or other similar works in the legal profession if this does not impede the performance of the

Judicial service. A judge may not enter into an employment relationship. The reception of the work to be carried out in addition to Judicial service, the Judge must pre-notify in writing the President of the Court. If the President of the Court considers that it is a work that a Judge shall not perform, propose Judicial Council to decide on the incompatibility of work by Judicial service, and inform the Judge. If the Judicial Council determines that the work is incompatible with the Judicial function, the Judge is prohibited to accepted.

The judges may be members of political parties, but in bodies of political parties should not act. But there was a question if judge is still unbiased, objective, if on the elections publicly, with name, surname and its function, supports particular political candidate.

Council of Judicial Ethics in the Judges' Association adopted an opinion taht the involvement of judges as mediators in court proceedings associated mediation is not contrary to the principles of the Code of Judicial Ethics, but..the involvement of judges as mediators or arbitrators in institutions outside the court (for a fee or pro bono) is in conflict with the principles of the Code of Judicial Ethics.

### **Schedule of judges and rules on allocation of cases**

President of the Court each year adopt an annual work schedule. Annual schedule of judges determines the allocation of judges to judicial departments or legal area in which they exercise judicial power. The Judge deals with priority cases which are defined as such by law. In determining the order of treatment of other cases can be considered in addition to time belongs to the court, the nature and importance of the case. In each area of law, which are arranged two or more judges, cases are assigned to individual Judge in the order of filing of the initial pleading taking into account the alphabetical order of surnames of Judges.

### **The Code of Judicial Ethics**

The Code of Judicial Ethics was unanimously adopted by General Assembly of the Slovenian Judges Association. The code contains the judge's professional and ethical commandments, which are written in the form of principles. The code in this manner represents a specific instruction to judges how to or how not to act in the office and beyond. The Code commits only the members of the Slovenian Judges' Association, in which the judges associate voluntarily. Council of Judicial Ethics in the Judges' Association advises members of the Association on the issues of judicial ethics and adopt a opinions on compliance with the Code of Judicial Ethics.

### **Opinions of the Council of Judicial Ethics in the Judges' Association**

The Council's position on judicial ethics is not legally binding for judges and serves as a recommendation to judges how to act.

Honesty is a guide to judge both the public as in private life. Honesty leads him to avoid any improper conduct or behavior, not only that which is in conflict with the law. When entering into legal relations with third parties and in private life must judge according to his function act with greater diligence in comparison with others.

If the judge in the media when expressing an opinion on a specific issue takes into account the

following principles of the Code of Judicial Ethics: the principle of independence, the principle of impartiality, the principle of compatibility, incompatibility principle and the principle of reputation, the use of the title of a Judge at the name does not conflict with the Code of Judicial Ethics. Taking into account the above position, the Council for Judicial Ethics believes that there are no impediments to the judges for expressing opinions in professional publications to used title of the judge with the name. In expressing its opinion in other media use title of the judge to the name discouraged.

On the basis of the amended law was this year the Code of Judicial Ethics with the same content adopted by the Judicial Council. This Code is binding on all judges and lays down rules for business and private conduct and behavior of judges in order to safeguard the independence, impartiality and fairness of judges and the reputation of the judicial service. The Judicial Council will also appointed the Commission for Ethics and Integrity, which will take opinions concerning the conduct constituting violations of the Code and adopted recommendations for compliance with the rules of the Code.

### Information to the public

The Court shall inform the public about their work and about their decisions of interest to the public through publications and other media, press conferences or by other appropriate means. Courts monitor media coverage in their area and inform the public about their work and problems. For media monitoring and publicity is responsible the President of the Court or on its behalf by the person authorized for public relations. Office of Public Relations at the Supreme Court carries out the obligations of the Court and the judiciary as regards communication with the public, providing expert assistance to the courts to exercise control over public image and appearance of the judiciary responsible for the websites and informative publications and to establish and maintain relations with various publics. On matters that are open before the court, notices to the media or journalists are given in writing or orally. In high-profile cases, exceptionally, notice are given to the press conferences. Written notice are published by the Court on its website and sent daily to individual media and on the Slovenian News Agency, when it comes to information concerning the general public. The notice must be drafted in such a way as to protect the reputation, privacy and commercial interests of the parties and other participants in the process. In oral information does not participate Judge who deals with the matter. Judges deal with parties only at the hearings.

On the notice board and website of the Court shall be published: schedule of Judges; rules for the allocation of cases; schedule of hearings and meetings where the public by law or court decision can not be excluded; other court documents and schedules hearings.

Selected case law is accessible to the public via the public web site of the Slovenian judiciary (<http://www.sodisce.si/>).



## The use of social networks

There are no special rules and restriction for judges and lay members against the use the social media (networks). There are only general ethical rules relating to the appropriate behaviour of the judges which can also be applied to the behaviour on the social media. Judges can and some of the judges do have connections thru the use of Facebook, tweeter and similar social media.

As a general rule, only facts that are submitted by case parties or discovered by following the procedural rules may be used in the procedure. While social media or the social networks do not seem to have an influence on the hearings or judgements as such, they can have a significant influence on their general perception.

Supreme Court has a placeholder on Twitter, but does not use it. Primary Internet site for the Supreme Court of Slovenia is [www.sodisce.si](http://www.sodisce.si). It provides information on:

- organisation of the court, rules of the court
- decisions of the court (through a specialised website [www.sodnapraksa.si](http://www.sodnapraksa.si))
- public hearings
- other public information (e.g., public notifications and announcements, news, etc.)  
various databases and tools relating to different judicial procedures (e.g., access to various court registries, interest fee calculator, ...)
- links to other courts in the judicial system (part of the same internet platform)

The website is in the Slovene language. Google Translate is integrated for easier access in other languages.

Code of Judicial Ethics is not published on court web site but they are published on the site of the Judicial Council and the Slovenian Association of Judges.

Limits and rules to what the public, judges, lay members or parties can say about the way the judges conducted a hearing or court judgments are only related to the behaviour in the courtroom and to the writings submitted to the court. Slovenia does not have appropriate contempt of court legislation which would adequately protect the authority and impartialiy of the court.

Personal information receives additional protection. It is possible to conduct some hearing "in closed court", especially in social disputes where court finds data on health status and diagnosis of the parties and i.e. in sexual harassment cases when court or all case parties see the need for it.

Social media or internet has not been used to monitor judges' work and/or worktime.

Opinion of the Council of Judicial Ethics in the Judges' Association:

Given the constitutionally guaranteed right to freedom of expression (Article 39 of the Constitution of the Republic of Slovenia) and the principles of the Code of Judicial Ethics, there

are no objections to the judge to have profile on social networks. If the judge on social network when expressing an opinion on a specific issue takes into account the following principles of the Code of Judicial Ethics: the principle of the independence principle impartiality, the principle of compatibility and incompatibility principle and the principle of reputation, the use of the title of a Judge in a profile on a social network is not in conflict with the Code of ethics of judges. Judge is not and can not be separated from society. As everyone also judge has its own look at social issues. Therefore, the judge on the social networks also speaks and writes about non-legal topics. However, due to social networks are for personal communications, the judge's use of social networks is linked to his personal responsibility and awareness of the consequences and impact of its communication on social networks in his actions and conduct as a judge. When expressing opinions and positions on social networks Judge must act so that his actions (published views, opinions, tweets) and behavior (release of pictures, photos, drawings, caricatures) will not affect its independence and impartiality and will not compromise the dignity of judges functions and performance of his judicial duties.

According to the Council is within its remit determining which records the judge in its communication on social network are contrary to the principles of the Code of Judicial Ethics.

Recently it has been publicly quite a resounding example of a judge who is in tweeter published quite offensive records about politicians and the police in connection with the high-profile criminal case that he himself regarded as the investigating judge. President of the Court against the judge initiate disciplinary proceedings but the Judge is then himself terminate the Judicial Service.

### **Complaints against the Court system and Judges**

Slovenian legislation does not set out the options for the general and formal public complaint against the administration of justice and against judges. Such a possibility have only the parties to the proceedings before the court.

The right to a trial within a reasonable time in the Slovenian legislation is regulated by a special law, which provides remedies for the protection of right to trial without undue delay, namely:

1. The appeal with a proposal to expedite consideration of the case,
2. A proposal for setting a deadline for addressing the matter or priority treatment, and
3. Calls for fair reparation (compensation).

If a party believes that the court is unduly protracting the decision, can the court hearing the case, filed a supervisory appeal in writing, to be decided by the President of the Court.

It is not perceived a direct impact on the judges in individual cases by politicians. But indirectly such an effect has been recently completely undeniable. Due to the increasing number of legal proceedings against current and former politicians, they impose completely inappropriate and even offensive attacks on the judiciary and judges, with the result that such attacks on the judiciary and judges multiply also by the general public and some media (journalists).

### Report by Judge Ma Milagros Calvo Ibarlucea, Supreme Court of Spain

#### I. The Court system in each country

It is composed by different jurisdictions or disciplines, Civil: Criminal, Administrative Labour and, only in the Supreme Court, the Military one. Inside them different instances of jurisdiction beneath the Supreme Court, usually two of them.

- a). They are part of the general court system .
- b) No, it is not independent
- c) No, it has not and neither in the general courts

#### II. The Independence of the Labour Court System.

- a) The judicial Council makes all the appointments for all the jurisdictions A number of the counselors.

Not nominally although there is an exception and not for labour courts

- b) The access to any jurisdiction is a common one for any applicants, of course with a law degree and then they have to pass through an examination or after a minimum of ten years professional activity to show their marks at the university, written works sort of previous activity etc. And for the Supreme Court there is also the possibility of a "fifth" shift for renowned people at Law, meaning lawyers professors high level public servants

- c) The answer has been given before.

for the first instance the tests are written , oral and the decision about a proposed case and for the minimum ten years professionals , the proof of their previous jobs and works , given for that a number of points , and after, an interview and a proposed case to be decided.

The Judiciary Council chooses in both cases who are going to be the members of the "court to examine applicants. There must be two or more judges, a prosecutor of the crown, two university professors an Advocate of the crown, a lawyer and a chief clerk.

- d) The answer has been given below, adding that once in the judiciary career, a number of judges in any jurisdiction get into them through a number of years or so-called examination just about the subject of the jurisdiction Languages are not demanded and of course recommendations are strictly forbidden . is this a joke or what ?

e) No, there not, and this has been answered before

a) Yes there are, they are comprehended in the Judiciary Power Law (current from 1985 and before, from 1870).

b) Besides what had been said before, does exists spefoco rules about the way to accompfish their duty (arts. 494-501. Judiciary Power Law). As they are pople who have come aut of age there is no method for asking for rules about how to act.

c) Not any lay judges

8) No, they are not aloowed a) No they are not

9) The limitations consist on addresing to the public authorities' greetingds or crticisms for their achievements. In any other sibject they are free to appear on nay media.

10) Yes long ago there two of them ended with the expulsion of the judges. They are always saying the same.

11) Not as far as I know.

Not as far I know.

#### IV. Social Media and the Courts

12) Yes they are, as I have said with the limitations already seen

a) Yes they can.

b) Yes they have.

There are not explicit limitations

c) Yes, there bing noit explicit limitations

d) There are any lay members

e) As far as i knoew I do not kow

f) No there anot

13). It is not ilegitimate but I do not think it is a fiable wy of learning

a) Yes, out of curiosity to ead the nonsenses taht ban be said .

b) There is the possibiliye as to assert something as being notorious for that , as not being a question of being notorious nr not it would be necessary taht the information had had INFLUENCIA.

14) No, I do not think so.

15) No, there are not a) No there are not b) There is not.

16) No any influence for good or for bad .

a) No.

bc) No, it does not c) No , it does not . d) Yes they have. e) There is not an explicit prohibition and besides, the hearings are open to public .

What appears through the hearings is public, not the rest of the evidence .

f) There is not limits

No, as far as I know.

1) There is the possibility not due to the media but to protect parties rights and public order there it may be in closed court .

2) Yes it can be.

3). Not the name but yes for the details

17) No it has not been.

18) Yes there had been.

To open a line of information inside the court, but with no result at all .

19) .No, there are not

## Sweden

### Report by Judge Cathrine Lilja Hansson, National Labour Court

#### I. The Court System

1. a)

There are three types of courts in Sweden:

a) The General Courts: district courts, courts of appeal and The Supreme Court

b) The Administrative Courts: administrative courts, administrative courts of appeal and The Supreme Administrative Court

c) Special Courts: The Labour Court, The Swedish Market Court and the Foreign Intelligence Court

The Swedish Labour Court is a special court set up to hear and rule on labour-related disputes. A labour dispute is any dispute which affects the relationship between employers and employees.

District courts are the court of first instance among the general courts and deals with criminal and civil cases and various kinds of other matters. In some cases a district court is first instance in a labour dispute. A judgement or a decision by a district court in a labour dispute may be appealed to the Labour court (not to a court of appeal). In other cases the Labour Court is the one and only court (2/3 of the cases). In such cases the Labour Court has exclusive jurisdiction. A judgement or a decision from the Labour Court cannot be appealed.

1. b)

The Swedish National Courts Administration is a government agency responsible for overall coordination and common issues for the Courts in General and the Administrative Courts, but not for the Special Courts as the Labour Court.

Within the Government Offices, the Ministry of Justice has the primary responsibility for matters relations to the judicial system, including the budgets and administration of the Swedish National Courts Administration. The Ministry of Labour has this responsibility concerning the Labour Court. The administration of the Labour Court is, in other words, independent of the administration of the general courts.

1. c)

The Labour Court has lay members.

When hearing a case the Labour Court generally consists of seven members

In the usual seven-member court there are three neutral members plus two members representing the interests of the employer and two representing employee interests.

The members have an equal vote.

Among the three neutral members – those who cannot be considered to represent either employer or employee interests – are the chairman and vice chairman. The third member of the group has specialist expertise in labour market issues.

Only the chairman is engaged full time in the court and therefore employed by the court. The other members serve in the court on an occasional basis alongside their usual employment.

Those members who represent employer and employee interests, are appointed by the principal organisations in the labour market, the Confederation of Swedish Enterprise, the Swedish Association of Local Authorities, the Swedish Federation of County Councils, LO (the

Swedish Trade Union Confederation) TCO (the Swedish Confederation of Professional Employees) and SACO (the Swedish Confederation of Professional Associations).

In some cases, however, the court may consist of only three members, two of the chairman and one associate judge. Furthermore the chairman can decide by himself on preparatory measures, strike out or stay a case, etc., where clear procedural bars exist.

Every district court, court of appeal, administrative court and administrative court of appeal has a number of lay judges. They are appointed by the municipal councils in the municipalities that are part of the judicial district of each district court, and by the county council assembly in the counties that are part of the judicial district of each administrative court, administrative court of appeal or court of appeal. A lay judge has the same responsibility for the court's decision as a legally qualified judge. The appointment is non-political, even though lay judges are appointed by the political parties.

There are lay members in the general court in criminal cases. In civil cases – a labour disputes – the court consist of one or three judges.

## II. The independence of the Labour Court

2. a + e + f)

The four chairman of the Labour Court are appointed by the Government.

There is a special authority, the Judges Proposals Board, responsible for the appointment process for all appointments as ordinary/permanent judges at the General Courts, the Administrative Courts and the Special Courts. The authority suggest who is to be employed as a permanent judge at a certain court. It is the Government who makes the final decision. As far as we know the Government appoints the person suggested by the authority.

The special authority has a board consisting of nine members. Five are or has been ordinary judges, two are lawyers not employed in the Court System (for intense lawyer at a law firm or persecutor) and two are politicians (Members of Parliament).

2. b + c + d)

To become an ordinary judge one has to have a Bachelor of Laws degree, Swedish citizenship and not be in personal bankruptcy. Besides that you need to meet the qualifications required to become a judge, as judicial skill, capability to analyse, integrity and capability to express one selves orally and in writing.

Many of those appointed as judge have undergone a special programme for training judges, including service at the court of appeal or administrative court of appeal and district court or

administrative court. After successfully completing the service period, the candidate is appointed to the position of Associate Judge at a court of appeal or administrative court of appeal. In addition, those with experience from other qualified legal work can be appointed to the position of permanent judge.

There are interviews with the applicant held by one member of the board, the head of the Court involved and a representative from the administration of the special authority.

In some cases there are tests, both oral and in writing. This is applicable for instance for appointments as the head of a court or a unit.

## 2. g)

Lay members/judges of the Labour Court are appointed by the government for a period of three years. The appointments are usually extended for a longer period.

The budget of the Labour Court is decided by the Parliament after a proposal from the Government prepared by the Ministry of Labour.

## 3.

There are special provisions concerning when an employment as an ordinary judge can be terminated.

The retirement age for a judge is at 67 (the same rule as for the labour market in general).

A judge can be dismissed because of illness (physical or mental disorder) if he or she is no longer capable to fulfil the work of a judge.

An ordinary/permanent judge can't be dismissed because of redundancy.

A judge can be dismissed without notice because of criminal offence or other misbehaviour which shows that the person is unsuitable as a judge.

A judge can be subject to disciplinary action by a special authority.

## 4.

The Ombudsmen or the Parliamentary Ombudsmen (JO), to give them their official title, are appointed by the Swedish Riksdag (Parliament) to ensure that public authorities and their staff comply with the laws and other statutes governing their actions.



The Parliamentary Ombudsmen form one pillar of parliamentary control in Sweden. The task of the Ombudsmen is to review the implementation of laws and other regulations in the public sector on behalf of the Riksdag and independent of the executive power. This review includes courts of law and other public authorities as well as their employees.

The basis for the work of the Ombudsmen is the individual's interest in being treated lawfully and correctly by the authorities. The Ombudsmen form one pillar in constitutional protection for the basic freedoms and rights of individuals.

The Chancellor of Justice is the Government's ombudsman in the supervision of authorities and civil servants.

5. a + c)

The four chairman in the labour Court handles all sorts of disputes at the court, no one has specific cases.

The individual parties in a dispute have no influence whatsoever over the composition of the court. No one outside the court can interfere and decide which judge or lay member that shall be involved in what case.

The court follows largely the same judicial process as the general courts. The Code of Judicial Procedure applies to the Labour Court.

5. b)

There is one person in the administrative unit of the Labour Court that decides which lay member that should sit on each case. The lay member normally have a fix day of the week when they are supposed to be at the court, if there will be a hearing that day.

For the court to be deemed to be composed in the most suitable way possible for an individual case the court is subject to certain composition regulations. If the case concerns an issue of significance for the labour market as a whole, such as the application of labour related legislation, a so-called general composition is used. Otherwise so-called special compositions are convened. In addition to the three official members, a general composition includes one member for the Confederation of Swedish Enterprise, one representative for the public sector employers, one for LO, and one for either TCO or SACO. For special compositions members are chosen from the sector of the labour market in which the dispute arises.

Customary rules apply in the labour court in respect of objections to members. This means that a member with links to either of the parties in a particular case is barred from serving in that case. In a dispute, say, between the Engineering Employers' Association and the Metal

Workers' Union, an employee or official for either of these organisations is not allowed to serve as a member of the court. On the other hand there is nothing to prevent anyone from serving who has affiliations to any Confederation of Swedish Enterprise or LO-affiliated organisations other than the Engineering Employers Association or Metal Workers' Union.

6. The government decides on promotions after the same procedure as described above.

### **III. Judicial Ethics, social media and court independence**

7. There are no special rules of judicial ethics for judges besides the oath.

8. A judge and a lay member are allowed to be active members of political parties and run for political office and to private work as arbitrators and mediators.

A judge is not allowed to be an attorney. It is possible to get a permit to act in a special case.

Even judges has freedom of expression and is therefore allowed to participate in public demonstrations.

9. There are no limitations in the ability for a judge to express themselves in the public. Of course there can always be a discussion on what is suitable.

10. There has been no court cases of that kind.

The fact that the Labour Court have some of the lay members nominated by the organisations of the labour market has caused debate on whether the court is an impartial court according to European Convention on Human Rights. The European Court of Human Rights has in a case declared that the labour Court is not in violation with the convention.

There are no claims about the court being influenced by politicians.

11. No

### **IV. Social media and the Court**

12.

Judges and lay members are allowed to use social media and do so. If they are on Facebook they can have a picture of themselves.

We don't know if judges in general have blogs or web pages, but we doubt that. No one of us four judges at the Labour Court has.

As far as we know is it possible for a judge to give information concerning personal matters on social media.

13.

We don't think the social media has changed the situation for the court. Of course there can be articles or reports on a pending case at the court in media (papers, radio, tv, internet, social media). We don't hesitate to read it. It is interesting to know if it is presented in a proper way.

In our cases it happens that the parties refer to information in social media, internet or media. A witness can be asked about such matters. If it is adequate information it can be of importance.

14.

There are cases about employees acting on Facebook or other social media and what they have said or written there and if it was right to dismiss the employee of that reason. Apart from that we can't see that social media have a big influence on the hearing or the judgement in other cases.

15. No

16.

The Labour Court has a website ([www.arbetsdomsolen.se](http://www.arbetsdomsolen.se)) The court is not on Facebook or some other social media.

On the website there is information about the court, hearings and judgements. The information is in Swedish and some information about the court is in English.

There is no access to the hearing at the labour Court through social media.

It is not allowed to take pictures in the courtroom during the session. It is possible to make a recording, but the court can take a decision that this is not allowed when a part or a witness is heard. This means that it is possible to make a recording of the sound and to post it on social media. As far as we know has this not happened.

Almost all de documents in a case are official, anyone has the right to take part of the documents. The documents can therefore be posted in a social media. Documents like doctors certificate are normally not official.

A judge is not allowed to disclose what has been said during the deliberation. Apart from that there are no formal limitations.

It is possible to have a part of the hearing “in closed court”, but not because of social media. It is possible for the court to decide that certain documents or details shall be confidential, but not because of social media.

17-19. no