XXIV Meeting of European Labour Court Judges
21-23 September 2016, Oslo, Norway

NATIONAL REPORTS
QUESTIONNAIRE 2

"Regulating employment conditions at workplace level"

General Rapporteur: Judge Jonas Malmberg, National Labour Court, Sweden, in cooperation with Jorma Saloheimo, President of the Labour Court, Finland.

Introduction

The traditional sources of employment conditions can be roughly divided into two categories. First, there are conditions which are determined outside the workplace. The prime examples are statutory provisions as well as collective agreements concluded by trade unions and employers' organisations at national, branch or regional level. Second, employment conditions could be agreed upon between the employer and the employee in the form of an individual employment contract, which in theory is supposed to have been negotiated.

Between these two categories we will find different kinds of employment conditions established at work place level and which provide a more or less uniform regulation of the employment conditions for the personnel as a whole or a group of personnel. For instance, at company-level you might find uniform regulation of certain benefits, such as a local pension scheme applicable to all employees of the firm. Also local working time arrangements are often designed to apply to all employees or a personnel group. There might also be different kinds of codes of conduct, through which the employer declare which behaviours are accepted at the work place.
We could use "**group norm**" as a loose non legal term for employment conditions established at work place level and which provides a more or less uniform regulation of

the employment conditions at the work place. Such group norms may be decided by the employer unilaterally. They may also be subject to information, consultations or negotiations with workers' representatives and/or individual employees.
The topic covers two aspects of such group norms. One aspect concerns the methods and instruments, which are used to create terms of employment at the workplace level. On the other hand, we can discuss how already existing terms of employment can be changed locally.

Summary

What we would like you to do is

- to identify and describe examples of different kinds of group norms which are used in practice in your country,
- to describe under which kind of legal concepts the group norms (identified under 1) are qualified and to what extent they give rise to rights and obligations which could be applied in court, and
- to discuss the means for employers to change the group norms (identified under 1) in a way which is less favourable to the employees.

Austria

Report by Judge Gerhard Kuras, Supreme Court, Austria

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?
This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:
A: Works agreements: works council and the employer may conclude works agreements. This is a form to exercise participation and also to create provisions, which grant certain rights to employees. This is restricted to certain issues. Works agreements can only be concluded about matters which are enumerated in the statute or tariffs (collective agreements of trade unions).

B: Customary conventions in an enterprise (conventions): this is possible in all issues.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2.</u> Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

A: Works agreements are an outcome of collective bargaining on the level of the enterprise between works council an employer, restricted to certain issues. They are legally binding for the employer and have to be applied to all employees covered by the scope of the works agreement. Works agreements give rise to rights and obligations and have to be applied by the court.

B: Conventions are regarded as part of the contract of employment. They are also binding for employers if the employer has not made clear that there cannot arise any right for the employee. If the employer clearly stipulates, that there cannot arise any right, nevertheless the employee may be entitled to the benefits of the conventions if it is applied to the majority of the employees an there is no convincing reason why it is not applied to this employee.

As a template, the following categories can be presented:

I. Unilaterally introduced benefits. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?

- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?

- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?

- Examples in case law?

Answer:

Such an arrangement creates an entitlement for the employees to be granted the benefit and they can claim it before the court. The mere application by the employer of such an arrangement creates an entitlement for the employees, if the employer has not made clear that there is no such entitlement.

It does not matter if or how the workers' representatives and the individual employees have been informed or consulted about the benefits.

This is explained legally by contract law (tacit clause in the contract) and the approach of equal treatment of employees.

There are many examples in case law regarding remunerations.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?

- What are the limits of the contents of such codes?

- Examples in case law?

Answer:

If an employer unilaterally introduces a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol the employees must observe such a code under a threat of termination of the employment contract only if it is usual (zero-tolerance concerning alcohol in an constructions enterprise) and does not harm fundamental rights of the employee. Furthermore the works council can claim for participation and demand a works agreement on this issue.

An employee can only be subject to other kinds of sanctions like reduction of pay if this is stipulated in works agreements or tariffs.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

– Do such agreements appear in your labour market system?

Answer:
Yes

– On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?

Answer:
Works council

– In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:
Such agreements appear in our labour market system. They may fulfill the formal requirements of an works agreements then they are legally binding as an collective agreement. If not they may become tacit clauses of the employment contracts. The employees can be represented by works council, elected by the personnel. Each employee can rise a claim before the court, and additionally the works council can claim for a declaratory judgement.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

In the undertaking in many issues the works council is considered to be the employees representative.

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:

This is binding in favor for the employee.

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

There is no right to opt out because the local arrangement is only binding in favor of the employee.

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?

4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

The employer may not unilaterally decide to change works agreements or convention as tacit clauses for the employment contract. If the employer wants to terminate certain kinds of works agreements (others can only be changed by an agreement or the decision of a public authority) then the employer hat to give notice to the works council three month before. Works agreements are binding also after this period for all employees which have been employed before but it is not applied on new employment contracts.

If the employer wants to change certain the employer has to bargain with the works council.

If it is a "convention"-tacit clause - the employer can only change with consent of each of the employees, which would usually be considered as a change of a single term of the contract

Belgium

Report by Judge Koen Mestdagh, member of the Labour Chamber of the Court of Cassation, Belgium

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?
This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:
Issues that are commonly regulated on a company/plant level are:
- the work roster(s);
- collective holiday period;
- extra holidays;
- disciplinary sanctions;
- dress code;
- code of conduct concerning the use of internet and email;
- a bonus plan;
- an extra-legal pension scheme (or other social security benefits).

In principle every employer is obliged to draft a "labour regulation" and the rules or at least a reference to the rules concerning the aforementioned issues (except a bonus plan) have to be included in the undertaking's "labour regulation". However it's not necessary to include a reference to the "pension scheme regulation" if it was approved by a collective labour agreement.
If the undertaking has a Works Council (which supposes at least 100 employees), the "labour regulation" and its modifications are drafted by the Works Council (equal representation of the employer's delegates and employee delegates who are chosen in social elections).
If there isn't a Works Council the employer has to billboard the draft of the "labour regulation" or the planned modification of an existing "labour regulation" and the employees or their delegates have the opportunity during 15 days to make remarks in a register or send their remarks to the labour inspectorate. After 15 days the employer has to send that register tot the labour inspectorate. If there are no remarks, the "labour regulation" is adopted. If there are remarks, the labour inspectorate will try to mediate and if they don't succeed, the question is referred to the Joint Industrial Committee or the National Labour Council that can decide with a 75 % majority.

Since an employer has to have a "labour regulation" as soon as he starts to employ his first employee, a lot of "labour regulations" are established unilaterally by the employer beforehand.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2</u>. Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:
The legal qualification of the norms laid down in the "labour regulation" is unclear. One author defined the "labour regulation" as some kind of collective labour agreement. But mostly it is considered as a complement to the individual contract. In the hierarchy of norms the "labour regulation" comes behind imperative statute law, collective agreements, the written individual contract, but before suppletory provisions of statute law, the oral contract and custom.
In principle the rights and obligations laid down in a "labour regulation" are binding for employer and employees and could be applied in court, but they can't be invoked against the employee if he hasn't received a copy of the "labour regulation", nor can the changes made to an existing "labour regulation" be invoked against the employee if the employer didn't follow the correct procedure.
Provisions of the "labour regulation" that are incompatible with norms of a higher rank, are null and void though.
In individual cases a derogation of the "labour regulation" can be agreed. The derogation must be established in writing.

As a template, the following categories can be presented:

<u>I. Unilaterally introduced benefits</u>. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

Answer:
A bonus plan is almost always introduced unilaterally by the employer. In theory the mere application of such an arrangement could create an entitlement for the employees, but it would be extremely hard to prove. In reality the conditions of the bonus plan are put in writing and are handed over to the employees concerned. To prevent that it could be considered as a custom, the bonus plan will always hold a clause stating that it can be revoked and doesn't create any entitlement for the future.

If the employee meets the conditions of the plan during the period of its validity, the granted rights can be applied in court, just as a result of a unilateral engagement.

In most cases, not all employees will be involved in the bonus plan or it will hold a considerable differentiation between categories of personnel. This could indeed give rise to questions off equal treatment of employees, but I have no knowledge of case law on this topic.

In principle the decision to introduce, modify or end a pension scheme for the undertaking belongs to the exclusive competence of the employer. However, if the scheme involves a financial contribution of the employees, the decisions have to be made either by a collective labour agreement, if the undertaking has a Works Council, a Prevention & Safety Comity or a Trade Union Delegation, or the "labour regulation" has to be changed properly (see question 1) if the employees aren't represented. The exclusive competence of the employer is also tempered by the fact that the affiliation to the scheme is incorporated in the labour contract. If the employer wants to modify or end the pension scheme, this could be seen as a major unilateral modification of an important condition of the contract, which can be considered by the employee as an irregular immediate termination of the employment.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer:
Such a code of conduct needs to be incorporated in the "labour regulation". The rules to modify the "labour regulation" (see question 1) have to be followed, thus the employees can make objections.

The "labour regulation" can include a provision in which grounds for immediate termination of the employment contract without compensation are enumerated. Thus failure to observe the code of conduct could be pointed out as such a ground. However the judge is not bound by this enumeration and can rule that the inobservance of the code of conduct isn't a sufficient ground for instant dismissal and allow the employee a compensation.
The disciplinary sanctions, including fines, the amount and destination of the fines, and the shortcomings they sanction, need to be mentioned in the "labour regulation" If the sanction is a fine, the total of fines per day is limited to 1/5th of a day's pay. The yield of the fines has to be spent in favour of the employees. If the undertaking has a Works Council, it's the council that decides on the destination.

There are no specific limits of the contents of such codes. Of course unlawful conduct or discriminatory rules cannot be imposed and unreasonable rules will not be validated by the courts if it leads to a case.

The European Court of Justice has to decide shortly (Advocate general Kokott has already concluded) on a preliminary question asked by our Court concerning a dress code that implies that Muslim women cannot wear a headscarf on the job.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:
Collective labour agreements on the level of an undertaking indeed exist. The agreement could be bargained by the members of the Trade Union Delegation, but to be valid the agreement has to be signed by the secretary of the local branch of a representative trade union (who isn't an employee of the undertaking) and the formal requirements of a collective agreement have to be fulfilled.
It's each employee individually that has *locus standi* before the court.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:
Belgium has limited the application of the obligations resulting from the Directive 2002/14/EC to undertakings with at least 50 employees.
As employees' representatives are considered either the employees elected to the Works Council or to the Prevention & Safety Comity, or the Trade Union Delegation.
If the undertaking has a Works Council, a Prevention & Safety Comity and a Trade Union Delegation, each institution has to receive the information concerning the subjects they are competent for.

If the undertaking has only a Prevention & Safety Comity and a Trade Union Delegation, the Prevention & Safety Comity will take over the competences of the Works Council.
If there is only a Prevention & Safety Comity, the comity will take over the competences of the Trade Union Delegation as well.

If only a Trade Union Delegation exist, it will take over the role of the Works Council and the Prevention & Safety Comity in this matter.

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:
It depends on the topic of the agreement. If it's something that traditionally is subject of collective labour agreements and the agreement leads to the conclusion of a CLA, it will have the legal effect of a CLA. If as a result of the agreement the "labour regulation" is modified properly, it will have the legal effect of the provisions of the "labour regulation". If the agreement regards something else, it probably will have no legal effect.

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:
If the local agreement is subject to a valid CLA, the individual employee cannot opt out. If the local agreement is subject to a provision of the modified "labour agreement", the individual employee could opt out if the employer agrees.

Changing the terms of employment

<u>Question 3.</u> Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. *Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is <u>less favourable</u> to the employees.*

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group norm is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

1. It depends on the group norm and how the group norm is established. The answer is yes for a bonus plan which is a unilateral engagement of the employer. The answer is mostly no for other kind of group norms.

2. Yes, if it falls within the scope of the Directive 2002/14/EC.

3. If the group norm is subject of a CLA valid for an indefinite period, then the employer will have to observe the period of notice that was mandatory agreed upon in that CLA to end the CLA.

4 & 5. If the group norm is subject of a CLA, then the CLA should be renegotiated (not necessarily after having given notice) to change it. If the norm is part of the "labour regulation" in an undertaking with a Works Council, then the Works Council has to decide on the modification. It is conceivable that a group norm is based on an informal agreement with employee representatives (e.g. a norm that is part of the "labour

regulation" of an undertaking without Works Council). In that case, the employer can terminate the agreement unilaterally, but that could lead to a conflict, maybe a strike.

6. Yes, as I already have indicated in the answer to question 2.I. concerning the benefit of a pension scheme, the unilateral change of a norm that is incorporated in the individual employment contract could be seen as a major unilateral modification of an important condition of the contract, which can be considered by the employee as an irregular immediate termination of the employment. If the employee decides to consider it as a dismissal, it will almost certainly lead to a court case. The court will then decide whether the concerned norm really can be qualified as an important condition of the contract and whether the change really can be qualified as a major modification. If the court comes to another conclusion, it will rule that the employment was terminated irregularly by the employee.

Finland

Report by Jorma Saloheimo, President of the Labour Court, Finland.

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are they established (by the employer unilaterally or after consultation with workers' representatives etc.)?

This question concerns the practice in the labour market and you need not (at this stage) legally qualify the practice.

Answer:

1. An established category of group norms consist of local agreements, which are concluded under an authorization given in a higher level collective agreement. The authorization may provide for an opportunity to deviate from the collective agreement, or simply leave certain issues open and delegate the regulation to take place locally. The local agreement is usually made between the employer and the representative of the local trade union, the shop steward. These local agreements regulate various employment conditions such as pay, working time, travel costs etc.

2. Statutory law may require some group norms to be established locally. For instance, the Co-operation Within Undertakings Act (334/2007) provides that the employer must draw up *a personnel and training plan* in a co-operation procedure with the personnel. Likewise, under the Non-Discrimation Act (1325/2014) an employer who regularly employs at least 30 persons must have *a plan for the necessary measures for the promotion of equality*. These measures and their effectiveness must be discussed with the personnel or their representatives. Similarly, the employer shall implement measures that promote gender equality as set out in *a gender equality plan* to be produced annually that deals particularly with pay and other terms of employment. The gender equality plan may be incorporated into a personnel and training plan or an occupational safety and health action plan (Act on Equality between Women and Men, 609/1986).

3. There may also be other negotiation outcomes, reached under a co-operation procedure but not necessarily required by law. Such an outcome may, for instance, concern the maximum amount of terminations or the maximum duration of lay-offs in a situation in which the employer is contemplating redundancies.

4. The employer may unilaterally introduce employment benefits or pension or other compensation schemes, concerning the whole personnel. Also established practice, followed in an undertaking for some time, may be understood as a source of group norms.

5. Finally, group norms may originate from an express agreement made between the employer and the personnel, although it may not be intended to have or is not capable of having the legal effects of a local collective agreement.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2.</u> Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

Local agreements, described above in reply 1.1., attain the legal effects of a collective agreement. This implies for instance sanctions and procedures regulated in the Collective Agreements Act (436/1946). The rest of the group norms have heterogeneous legal effects, see below.

As a template, the following categories can be presented:

<u>I. Unilaterally introduced benefits</u>. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

Answer:
As a rule, a unilaterally introduced benefit, such as a bonus programme, does not become binding upon the employer. Thus the employer may also unilaterally change or decide to discontinue the programme. This is all the more clear if the employer has refused to conclude an agreement on the matter and announced that the conditions of the benefit are decided separately for each year. Such was the case in Judgment 2010:93 of the Supreme Court, concerning a bonus programme.

It is, however, possible that a practice has been followed consistently for a number of years and is deemed to have tacitly become a binding term of the employment relationships. This is decided on a case by case basis taking into account various criteria, such as the need of

protection of the employees, and the good faith and legitimate expectations of the parties. An example is Judgment 1995:52 of the Supreme Court, in which the employer had for decades paid a Christmas bonus to the employees. The employer had with the consent of the employees converted the bonus into a merit pay. Later on the employer changed the merit pay so that it became dependent on the result of the company. The Court found this to be a unilateral deterioration of a binding term of employment, which was not permissible.

There has been ambiguity both in case law and in legal writing as to the legal characterization of collective local norms, which have been found to bind the employer vis-à-vis the personnel. Earlier it was common to explain that such norms had converted into conditions of the individual employment contracts. In recent decisions of the Supreme Court this explanation is not used any more. In a doctoral dissertation by Jari Murto (2015) the concept of *group norm* as a condition of the *personnel relationship* is introduced. According to Murto, group norms determine terms of employment relationships, not employment contracts. Metaphorically speaking, the employment relationship is seen as an empty container, which receives its contents from various sources: statutory law, collective agreements, individually agreed terms – and local group norms. The binding nature of group norms, if any, is explained in different ways in accordance with the sub-group in question. Sometimes an express agreement is at hand, sometimes we can identify established practice etc.

The application of local collective arrangements must follow the requirement of equal treatment. This is the case regardless of whether the arrangement is considered to be a binding agreement or a unilateral, non-binding practice as such. This was stated in Judgment 2008:28 of the Supreme Court in the context of a bonus programme, the conditions of which were different for permanent full-time employees on the one hand, and for part-time employees and employees in a fixed-term relationship on the other.

Here we can also mention Judgment 2009:52. The Supreme Court held that the defendant company had no acceptable reason to provide a higher standard of occupational health care services for the white collar workers than for its construction workers. The company had argued that its purpose was to commit persons important to its functions and to reduce absenteeism of such persons. The Court found, however, that this "key person argument" did not apply to the whole group of white collar workers and that also some of the manual workers could be equally important to the firm.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer:

Such codes have been assessed particularly in dismissal cases. For instance in its Decision 2013:166 the Labour Court accepted a zero-tolerance rule on alcohol, applied in a bus company, and found that the company had a valid reason to terminate the employment contract of a bus driver, whose level of alcohol in blood in the morning was 0,35 ‰ . The maximum level under law is 0,50 ‰, but the nature of the work (in this case transportation of school children) justified the requirement of a zero level. Another condition of termination in this and similar cases is that the rule is familiar to the whole personnel and is applied consistently.

In another case, Labour Court Decision 2014:88, the employer company had introduced a dress code and purchased a uniform work clothing to all its employees. Also the applicable collective agreement laid down a duty to employers to provide work clothing to employees. One employee of the company, a truck driver with a rasta hair, refused, however, to wear a cap that was part of the outfit. After several unsuccessful reprimands and warnings his employment contract was terminated. The Labour Court found the termination to be justified. The Court noted that the employee could alternatively have worn a company headscarf and so kept his rasta hair. Thus the requirement imposed by the company did not impair the employee's basic right of self-determination. The Court also noted that the misbehaviour of the employee did not as such cause serious harm to the company, because the truck driver did not, for instance, have to be in contact with the customers of the company. The Court, however, took the position of principle that any reasonable requirement, imposed by an employer, must be duly followed and not be overridden with the employee's own choice.

Other sanctions, such as reduction of pay, are normally not available in breaches of the kind of company codes discussed here. In this context we can, however, mention Judgment 2010:93 of the Supreme Court. The case concerned a bonus programme with a condition that any loss caused to the company by illegal industrial action would be deducted from the bonus of employees who have taken part in such action. The Court found that the application of that condition to employees, who had taken part in a strike called by a workers' federation, was discriminatory and infringed the freedom of association, guaranteed in the Constitution and several international human rights instruments. The decision has also been criticised, as it has been seen to protect illegal conduct in the labour market.

As can be noticed from the case law explained above, basic human rights limit the application of company codes discussed here. Also the requirement of consistent application must be followed.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
-
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
-
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

There are two agreements of this kind which are regulated in statutory law. First, the Working Hours Act (605/1996) provides for a possibility to make local working time agreements in non-organized companies, which are covered by a collective agreement that has been declared as generally applicable. The employer and the employees' representative, usually the shop steward, can agree on *the arrangement of regular working hours* in the way and within the limits prescribed in the said collective agreement. In this way the local parties are also allowed to deviate from the provisions of the Act. This is the only occasion where local agreements, based on a generally applicable collective agreement, are allowed.

Second, under Chapter 5 of the Co-operation Within Undertakings Act, the local parties can agree upon so called *working rules* complied within the undertaking. Such rules may regulate for instance notification of sick leaves and other absences, the use of health care services and other social benefits, work clothing, passes needed in the workplace area etc.

In both cases the agreement binds all employees whom the contracting employee representative can be considered to represent. The agreement shall be followed as a part of each employee's contract of employment unless otherwise provided in the applicable collective agreement. However, the agreement does not override an express provision, more favourable for the employee, of a contract of employment.

Also without any express support in law it is possible to regulate terms of employment through agreements of a collective nature at the local level. The agreement may be made directly between the employer and each employee. Also the shop steward or other employee representative may be given the authority to make such an agreement on behalf of the employees. Legally such agreements have the nature of a contract of employment. By means of such an agreement the employer may renounce his unilateral decision-making power in some respects, or the employees may give their consent to certain cost saving measures. There is little case law on such agreements, but for instance in the praxis of the Labour Court we have encountered local collective agreements, which have not been made under an authorization of a higher level collective agreement and have not fulfilled the criteria of an independent local collective agreement either. In case 2006:40 a local agreement on the compensation of travel costs was made, but the claim based on the agreement was not for the Labour Court to consider. The result was the same in Decision 1994:77, in which the local parties had agreed on the method of notification of the use of outside labour.

In the enforcement of agreements discussed here, each employee individually has *locus standi.* The shop steward, for instance, who may have been the signatory party to the agreement, does not have the right of action merely in his capacity of an employee representative.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

The employees' representative is normally the shop steward, who is elected by the members of the local trade union and is employed in the undertaking. Each personnel group (production workers, white collar workers, professional and managerial staff) has its own shop steward, who represents also the non-organized members of the personnel group. If a personnel group has no shop steward, its members have under law the right to elect a representative for the purposes of the co-operation procedure.

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:

The co-operation procedure does not normally result in an agreement, although mutual understanding is reached. The result is put into effect by the employer's unilateral measure. To become a legally binding agreement, the result of the negotiations must very clearly reflect the intention of both parties to commit themselves to such an outcome. See replies to questions 2.I and 2.III above.

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

An individual employee may opt out from an otherwise binding local agreement only in one case. Such a right is by law connected to local agreements on regular working hours, dealt with in reply to question 2.III. The legislator's choice has been criticised, because the right to op out is not very suitable with the collective nature of a working time arrangement.

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

1.In general, a group norm can be changed in the same way as it came into being. Thus, a local agreement can be changed by mutual agreement, group norms unilaterally introduced by the employer can be changed or discontinued by the employer's decision etc.

2.If the substance of the group norm relates to one of the matters, which must be treated in the co-operation procedure, also changes in these matters must be informed and consulted with the employees' representatives. There is an extensive list of these matters in the Co-operation Within Undertakings Act.

3. See below in reply 5.

4. See reply 1. above.

5. As all agreements, also agreements containing group norms can be brought to an end by termination by either party. Well established rules on this procedure apply to local agreements concluded under an authorization of a higher level collective agreement. Usually a period of notice of three months must be followed. Some local agreements come to an end automatically when the term of the authorizing agreement expires. This is the case when it has become customary to renew the local agreement, typically regulating pay, together with the authorizing agreement.

6. Clauses in individual employment contracts may not be changed or terminated unilaterally by the employer, unless for instance the applicable collective agreement provides for an authority to do so. However, if the employer can invoke a valid reason which justifies the termination of the employment contract, the change can be executed unilaterally. Also the period of notice must be followed before the change is realized. Legally it does not make a difference if the measure is qualified as a change of a single term of the employment contract, or a termination of the whole contract and an offer for a new one with changed conditions. Anyway, the Supreme Court has accepted the "notification method" focusing on a single clause or term of the contract. If the employee does not accept the proposed change, the employment contract is deemed to have been terminated by the employer.

Germany

Report by Judge Reinhard Schinz, Landesarbeitsgericht Berlin-Brandenburg, in collaboration with Judge Mario Eylert, Federal Labour Court, Germany.

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?

This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:

1. Betriebsvereinbarung (works agreement)
   - normative effect
   - agreement between employer and Betriebsrat (works council)
   - issues: nearly unlimited within the framework of EU-law, Constitution, statute law as long as issue is not ruled or usually ruled by collective agreement

2. Gesamtzusage (conditions of employment unilaterally, uniformly and explicitly laid down by employer)
   - issues: all possible contents of employment contract
   - usually fringe benefits, pension schemes
   - may touch matters of co-determination according to Betriebsverfassungsgesetz (act on works constitution), i.e. employer needs consent of works council

3. Betriebsübung (general practice, conditions of employment unilaterally, uniformly but not explicitly granted or applied by employer)
   - e.g. established position or position of trust, created by granting benefits for a number of consecutive times (usually 3) without explicit amendment of contract or other agreement
   - issues: see Gesamtzusage
   - may touch matters of co-determination, see above

4. General terms of employment laid down in employment contract (Allgemeine Vertragsbedingungen - general terms of contract)
   - Imposed by employer uniformly in contract - employee can take it or leave it; there is usually no room for negotiating general terms
   - No right of co-determination or consultation of works council concerning terms of employment
   - General terms can be tested for fairness by labour court

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2.</u> Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

1. Betriebsvereinbarung: Normative law

2, 3 and 4: Contract law; Same effect as individual employment contract

As a template, the following categories can be presented:

<u>I. Unilaterally introduced benefits</u>. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

Answer:

- all group norms are legally binding
- mere application: see 3. Betriebsübung
- Betriebsvereinbarungen (works agreements) have normative effect
- contractual group norms (2, 3, 4) create individual entitlements even if participation of works council is necessary by law but not adhered to by employer
- 2, 3 and 4 are or are deemed to have become part of the individual employment contract; in 2 there is an explicit offer by the employer and an implied acceptance by the employee; in 3 the employer's action is considered to be a conduct implying a legally binding intent which does not need to be

accepted by the employee if it entails a positive change of employment conditions; whether or not such a conduct is deemed to be implying such an intent depends on whether or not the employee may in all fairness assume that the employer's action are meant to be legally binding beyond the actual occasion (e.g. granting a Christmas bonus 3 years in a row without any disclaimer for the future creates a Betriebsübung)

- Equal treatment:
  - Works agreements have to observe the general principle of fair and equal treatment according to the provisions of the works constitution act - § 75 - itself. Besides, the statutory provisions of the General Act on Equal Treatment have to be observed
  - The statutory provisions of the General Act on Equal Treatment are applicable to nr. 2, 3 and 4

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

– Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
– What are the limits of the contents of such codes?
– Examples in case law?

Answer:

- In principle: yes. Such rules are typically within the employer's prerogative. However, such rules may be contested before the labour court as unfair, unlawful (e.g. discriminatory) or unconstitutional (e.g. infringing disproportionally upon an employee's freedom of religion).
- Alternative to dismissal: Warning. Reduction of pay is not permissible.
- Limits: Constitutional freedoms, right of co-determination by works council
- Case law: Employer's rule for shop assistants not to wear Islamic head scarf in department store. Dismissal on account of breach of rule by female employee was considered unjustified by Federal Labour Court (constitutional appeal to Federal Constitutional Court by employer was rejected) on account of freedom of religion. Employer did not present facts nor evidence of concrete complaints by customers. Besides, employee could have been posted to work out of sight of customers. Therefore: dismissal disproportionate.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

- Yes, see above Nr. 1 - works agreement
- Work force represented by works council
- Works agreements consist of contractual and normative part. Breach of contractual part can be sued by works council against employer or vice versa. Normative part entitles either employer or employee thus creating contractual obligations/entitlements which must be pursued individually.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:
works council

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:
Ex lege such an agreement (Interessenausgleich) has no normative effect. However, the parties to such an agreement may impose a normative effect to their agreement.
If an employee deviates from such an agreement to the detriment of an individual employee he or she is entitled to financial compensation according to the discretion of the court.

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:
Since works agreements have normative effect the principle of unilateral binding applies: General rules are binding for both parties of the employment contract, however, the contract may provide conditions which are more favourable to the employee than the works agreement.

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.
In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

1

- A works agreement can be terminated unilaterally by the employer. Depending on the subject of the agreement it can have continuing effect.
- Contractual provisions can be changed by contract or by termination with the intent to continue the relationship under changed conditions (Änderungskündigung).

2.

- There is no obligation to consult the works council before terminating the works agreement.

- If the employer wishes to terminate the contract of employment with the intent to continue the relationship under changed conditions the works council has to be informed about the reasons for such a termination or change of conditions.
- Changes in general conditions of work or general rules may fall within the scope of the works council's right of co-determination.

3. For works agreements there is a 3 months' period of notice.

If a contract is to be terminated with the intent to continue the relationship under changed conditions there is the usual period of notice according to statute law, collective agreement or contract of employment.

4. A works agreement can become null and void if a collective agreement covers the matter at hand for the first time, thus abolishing the competence of employer and works council to create normative regulations.

5. No reason or justification is needed to terminate a works agreement.

6. As far as this question relates to group norm nr. 3 (Betriebsübung), this can be changed unilaterally in principle only by means of termination with the intent to continue the relationship under changed conditions (Änderungskündigung). This has to be issued to each employee individually.

In general terms of employment the employers' right to cancel certain conditions of work, particularly benefits, is frequently stated. If such a cancellation takes place it effects only this particular term, not the contract as a whole. Such a right of cancellation is subject of a judicial scrutiny**.**

Hungary

Report by dr. Anna CSORBA, dr. Zoltán NÉMETH, dr. Bálint RÓZSAVÖLGYI, dr. Zsófia LELE, dr. Szilvia HALMOS, dr. Csaba BAGJOS and dr. László SZABÓ.

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?
This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:

The most common types of group norms at Hungarian employers are the followings:
- rules on working time schedules
- rules on performance requirements related to performance-based wages
- organisational and operational regulation (the establishment of which may be compulsory for public employers)
- disciplinary code
- different types of benefit policies (on cafeteria, bonus, covering of work-related costs etc.)
- work-life-balance policy
- vacation plan (the establishment of which may be compulsory for public employers)
- inventory rules
- dress code
- code of ethics
- rules on protection of confidentiality
- rules on the use of working tools
- rules on financial administration
- equal opportunities plan (the establishment of which may be compulsory for larger public employers)
- rules on labour health and safety.

Generally speaking, all these group norms may be established by the employer unilaterally, within the framework of norms related to employment relationships (hereinafter: NRER and NRERs).[1] However, group norms concerning a larger group of employees can be adopted only after consultation with the so-called works council,[2] which is a body of the workers' elected representatives taking part in the decisions of the employers.[3] An agreement between the employer and the works council ("works agreement") or collective agreements may expand the scope of issues that are subject to compulsory consultation

[1] The "norms related to the employment relationship" include the relevant statutory legal provisions, collective agreements and some other documents adopted as a result of collective bargaining [Act no. I of 2012 on the Labour Code (hereinafter: LC), sec. 13].
[2] LC, sec. 264(1)
[3] LC, sec. 235(1)

with the works council or may strengthen the rights of the works council (e.g. through the introduction of co-decision rights).[4] However, a failure to consult with the works council does not affect the validity of the employer's act. In this case, the works council may initiate a collective labour dispute before a conciliation committee. The parties are not bound by the decision of the committee, unless they agree upon this in advance.[5] So it can be concluded that the consultation right of the works council is a pretty weak instrument to influence the content of the group norms.

It can be noted that in the era of the previous Labour Code (1992-2012; hereinafter: "1992 LC")[6] a failure to consult with the works council resulted in the invalidity of the employer's specific arrangements, so the new LC weakened the rights of the workers' representatives in this aspect.[7]

Statutory law provides for one exception: the consent of the labour safety representative (or committee) is required for the validity of the employer's rules on labour health and safety.[8] In this case the lack of consent results in the invalidity of the specific group norm.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2.</u> Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

Act no. I of 2012 on the Labour Code (hereinafter: LC) expressly regulates the establishment, validity, effect, binding nature, declaration, withdrawal, modification and some other aspects of the so-called "employer's policies" (hereinafter: EP and EPs).

Rights and obligations may arise from the employer's unilateral acts only in cases defined by norms related to employment relationships.[9] It is not sufficiently clear what "defined by" means in this context. According to the narrower interpretation, only those cases are covered in which the NRERs expressly authorise the employer to establish a specific policy.

4 LC, sec. 264(2)
5 LC, sec. 291, 293(1)
6 Act no. XXII of 1992 on the Labour Code (effective before 1 July 2012)
7 See in detail: Gyulavári, T. – Kun, A., *A munkáltatói szabályzat az új Munka Törvénykönyvében* [The employer's policy in the new Labour Code], s.a., 17 (available: https://jak.ppke.hu/uploads/articles/12417/file/A%20munk%C3%A1ltat%C3%B3i%20szab%C3%A1lyzat.pdf; last visit: 10th June 2016)
8 Act no. XCIII of 1993 on Labour Safety (hereinafter: LS Act), sec. 72(4)
9 LC, sec. 13, 15(1)

However, the LC does not provide for such rules, and it is not typical in collective agreements either. According to the broader interpretation, this requirement means that the EP can be derived from any regulation of a NRER. This broader sense apparently ensures that the employer is given a very wide discretion in the exercise of its policy-making activity. On the other hand, the general rules of conduct of employers and employees regulated in the Introductory Provisions of the LC (duty of mutual co-operation, prohibition of the abuse of rights, principle of equity, protection of personal rights, the employer's duty of equal treatment)[10] limit the power of the employer to freely exercise this activity.[11]

In sum, an EP may be legally binding provided that
- it can be derived from the employer's right to give instructions;
- it can be derived from any NRER;
- its derogation from any NRER is permitted by the latter;
- it complies with the general rules of conduct referred to above;
- it is properly delivered to the employees concerned (see in detail in the answer box below).

As a template, the following categories can be presented:

I. Unilaterally introduced benefits. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?

- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?

- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?

- Examples in case law?

Answer:

The employer may assume obligations unilaterally in the framework of an EP, which can be legally binding under the circumstances described in the previous answer box. The

10 LC, sec. 6(1)-(3), 7, 9, 12
11 Gyulavári – Kun *supra,* 5-6

consultation rights of the workers' representatives (works council) and the consequences of the omission of the consultation were outlined in the answer to question 1.

A valid EP enters into force upon its proper delivery to the employees concerned. The beneficiaries of the EP may assert their rights on the grounds of the EP from the time of delivery. The LC regulates the general ways of delivery of legal statements, including EPs. Written legal statements, for example, may be delivered by direct delivery by hand, via post, the electronic ones by making them accessible to the addressees, etc.[12] There is a special form of delivery as regards EPs: they shall be considered delivered if published by means considered customary for and commonly known in the area.[13] These ways of delivery include *e.g.* posting the EP on the employer's internal IT-network, displaying it on an information board on the employer's premises, etc. The insertion of specific provisions on benefits regulated by the EP into individual employment contracts is not required, and they are not required to be accepted individually by each employee concerned either.[14]

The LC acknowledges that the unilaterally formulated practices or procedures of the employer shall be also considered as EPs.[15] For example, if the employer simply gives an extra bonus for the staff members before every Christmas for some years, this practice can qualify as an EP, and be claimed by the employees even if the employer makes no explicit statement about the commitment to provide this benefit. However, an EP may be amended to the beneficiary's detriment, or may be terminated effective immediately in the event of subsequent major changes in the circumstances of the employer whereby carrying out the EP is no longer possible or it would result in unreasonable hardship.[16] Hence, as regards the example given above, if the employer establishes that the reduction of its turnover in the current year makes it impossible to pay the Christmas bonus, it may deny to provide it.

The employer has a wide margin of discretion in the establishment of such EPs, however, the employer's duty of equal treatment applies to the formulation of EPs as well.[17]

No case can be found among the published decisions of the Curia of Hungary (the supreme judicial body of the Hungarian court system) in respect of the aforementioned regulation of the new LC. Nevertheless, the future development of the courts' case law may be predicted through the examination of the earlier case law.[18] The Curia held in a judgement related to the 1992 LC that the employer may regulate the details of the reimbursement of the travel costs of workers with regard to the relevant provisions of the collective agreement and statutory law. However, if these latter do not regulate otherwise, the

12 LC, sec. 24
13 LC, sec. 17(2)
14 LC, sec. 16(1)
15 LC, sec. 17(1)
16 LC, sec. 16(2)
17 LC, sec. 12; Act no. CXXV of 2003 on Equal Treatment and the Enhancing of Equal Opportunities (hereinafter: ETA Act), sec. 21
18 It shall be noted that the 1992 LC did not regulate the EPs, however the case law elaborated some principles on the proper way of using them.

employer may, through the modification of its earlier practice, unilaterally set forth additional conditions (*e.g.* use of own car) for claiming an increased sum of reimbursement, even if this is detrimental to the employee.[19] The same case would presumably be ruled otherwise by the Curia in the context of the new LC. Under this latter, the unilaterally introduced practice of the employer should be considered as an EP as well. It is still feasible for the employer under the new code to determine the details of the reimbursement of travel costs in an EP in the framework of the collective agreement and statutory law. However, the withdrawal or modification of such EP can take place only with reference to subsequent major changes in the circumstances of the employer, whereby carrying out the earlier practice would no longer be possible or it would result in unreasonable hardship.

Another case ruled by the Curia on the basis of the 1992 LC would probably be decided in the same way in the current legal context as well.[20] The Curia held that the employer has a wide margin of discretion regarding the distribution of bonuses, however, it is obliged to meet the requirement of equal treatment.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer:

An EP may regulate the obligations of the employer as well. This can also be legally binding under the circumstances described in the first answer box under question 2.

The legal ground for the establishment of such EP is the employer's right to give instructions.[21] The employer may give "normative instructions" on issues that could be regulated by individual instructions.[22] As referred to above, EPs may derogate from any NRER as far as it is permitted by the latter. According to the general rule, an EP may derogate from statutory law only in favour of the employee.[23] For example, a zero-tolerance rule concerning the consumption of alcohol may be regulated by an EP as far as it can be derived from a labour safety provision of a NRER,[24] or from a statutory provision

19 Judgement of the Curia, no. BH 2013.256
20 Judgement of the Curia, no. BH 2008.250
21 LC, sec. 52(1)(c)
22 See: *Gyulavári – Kun*, *supra*, 7
23 LC, sec. 15(3), 17, 43
24 LC, sec. 51(4); LS Act, sec. 2(3)

on the employee's duty to preserve his/her working ability during the working time, or from any other NRER.

The breach of an obligation prescribed in an EP has to be considered as a breach of a duty arising from the employment relationship. Under certain circumstances it may lead to disciplinary consequences, including the limited reduction of the employee's wage,[25] as well as the employee's dismissal with or without notice.[26]

The relevance of the consultation rights of the works council and the proper form of delivery have been described in the previous answer box.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

– Do such agreements appear in your labour market system?

– On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?

– In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

- Yes, such agreements exist in the Hungarian labour market system and they are called "works agreements"[27].

- On the employee side, the shop steward or the works council – both of them elected by the personnel – can represent the personnel in such bargaining[28].

- In case of breach of such a contract, the shop steward or the works council is the only party who has locus standi before a court. Workers may pursue their claims arising from the employment relationship or out of the LC by judicial process[29].

25 LC, sec. 56 (the financial detriment as a disciplinary consequence may not exceed the amount of the employee's basic wage for one month)
26 LC, sec. 66(2), 78(1)
27 LC, sec. 267
28 LC, sec. 239, 267(1)
29 LC, sec. 285(1)

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

In this context, the shop steward or the works council is considered as the employees' representative in our country[30].

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:

For the purposes of the LC, works agreements shall mean "employment regulations", such as legislation, collective agreements and works agreements, and the binding decisions of the conciliation committee[31]. Works agreements are binding both on the employer and the workers. The provisions of works agreement governing employment relationships shall apply to all the workers employed by the employer[32]. Works councils may pursue their claims arising out of the LC or a works agreement by judicial process[33]. The scope of works agreements may cover rights and obligations arising out of or in connection with employment relationships[34]. The employer and the works council or the trade union may set up a conciliation committee (hereinafter referred to as "committee") to resolve their disputes. Theworks agreement or the collective agreement may contain provisions for a standing committee as well[35].

The employer and the works council may conclude a works agreement for the implementation of the provisions of the LC and for promoting their cooperation[36]. In this context, the employers shall, for example, consult the works council prior to passing a

30 LC, sec. 235(2)
31 LC, sec. 13
32 LC, sec. 268(4)(c), 279(3)
33 LC, sec. 285(1)
34 LC, sec. 277(1)
35 LC, sec. 291(1)
36 LC, sec. 267(1)

decision in respect of any plans for actions and adopting regulations affecting a large number of employees. Employer's actions in the above respect shall, in particular, mean:

a) proposals for the employer's reorganization, transformation, the conversion of a strategic business unit into an independent organization;

b) introducing production and investment programs, new technologies, or upgrading existing ones;

c) processing and protection of personal data of employees;

d) implementation of technical means for the surveillance of workers;

e) measures for compliance with occupational safety and health requirements, and for the prevention of accidents at work and occupational diseases;

f) the introduction and/or amendment of new work organization methods and performance requirements;

g) plans relating to training and education;

h) appropriation of job assistance related subsidies;

i) drawing up proposals for the rehabilitation of workers with health impairment and persons with reduced ability to work;

j) laying down working arrangements;

k) setting the principles for the remuneration of work;

l) measures for the protection of the environment relating to the employer's operations;

m) measures implemented with a view to enforcing the principle of equal treatment and for the promotion of equal opportunities;

n) coordinating family life and work;

o) other measures specified by employment regulations[37]

37 LC, sec. 264(1)-(2)

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

An individual employee has no right to opt out from the local arrangement, because the provisions of the works agreement governing employment relationships shall apply to all the workers employed by the employer[38].

38 LC, sec. 268(4)(c), 279(3)

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

1. Unilateral acts, statements

Rights or obligations may derive from unilateral acts only in cases defined by employment regulations. Exercising the right of withdrawal as provided for in employment regulations or by agreement of the parties shall terminate the agreement retroactively to the date of conclusion. In the event of withdrawal, the parties shall settle accounts.

The provisions on agreements shall also apply to unilateral acts. A unilateral act shall take effect upon delivery to the recipient and - unless otherwise provided for in the LC - it may be amended or withdrawn only upon the recipient's consent.

2. Commitments

Under unilateral commitments (hereinafter referred to as "commitment") the carrying out of the commitments entered into may be demanded irrespective of the beneficiary's

acceptance. Workers shall be allowed to undertake a statement of commitment only where expressly provided for by employment regulations. A commitment may be amended to the beneficiary's detriment, or may be terminated effective immediately in the event of subsequent major changes in the circumstances of the person making the commitment whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship.

Furthermore, the provisions governing unilateral acts shall also apply to commitments, with the exception that the obligor shall not claim invalidity of his legal act, alleging that it was not served upon the beneficiary or that it was served improperly.

3. Employer's internal policy

Employers shall be able to implement the legal acts referred to in points 1 and 2 by means of internal rules established of its own accord or by way of a procedure formulated unilaterally (hereinafter referred to as "employer's internal policy"). The employer's internal policy shall be considered delivered if published by means considered customary for and commonly known in the area.

4. Formal requirements

Legal acts may be made without particular formal requirements, unless otherwise provided for by employment regulations or by agreement of the parties. Upon the employee's request, legal acts shall be made in writing by the employer where this is not otherwise mandatory.

A legal act shall be construed to have been made in writing:

a) if executed by means of an electronic document with facilities for retrieving the information contained in the legal act unaltered, and for identifying the person making the legal act and the time when it was made (hereinafter referred to as "electronic document");

b) in several cases, also if published by means considered customary for and commonly known in the area.

Where an agreement had to be made in writing, any amendment thereto and termination thereof shall also be executed in writing. Unless otherwise provided for in the LC, any legal act made in violation of formal requirements shall be construed invalid. The legal consequences of invalidity shall not apply to any legal act that has been executed upon the parties' mutual consent.

As regards the unilateral acts of employers, the reasons must be provided in writing in cases defined by the LC, and the workers affected shall be properly informed concerning the means of enforcement of a claim and also of the time limit available, if shorter than the term of limitation. In the event of failure to provide information as to the time limit, the claim may not be enforced after a period of six months.

A written legal statement made by a person who is illiterate or incapable of writing shall be considered valid if executed in an authentic instrument or private deed representing conclusive evidence,

a) where the signature or initial of that person is verified by a court or notary public,

b) that is countersigned by a lawyer or witnessed by two witnesses to verify that the person making the statement signed or initialed the document that was drafted by another person before them, or

c) where the person making the statement acknowledged before them the signature or initial on the documents as his own.

If the issuer of a document containing his statement cannot read, or he does not understand the language in which the document is made out, the written legal statement shall be considered valid only if the document contains any evidence to suggest that the document was read to the issuer and the issuer was educated as to its contents by either of the witnesses or the counter-signatory.

Ireland

Report by Kevin Foley, Chairman, Labour Court, Ireland.

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?

This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:

Group norms will commonly set terms and conditions of employment for employees in an enterprise or sector. Matters such as hours of work, arrangements for the taking of holidays, arrangements for operation of maternity and other benefits which exceed statutory minima, grievance and disciplinary procedures, operation of performance management and review and other functional aspects of the employment would generally be encompassed. Where a Trade Union is present and representing employees collective bargaining is the normal method of establishing and amending /developing group norms. In employments where Trade Unions are not present the setting of group norms is commonly reserved to the employer unilaterally. Collective bargaining in Ireland is defined as voluntary engagements or negotiations between any employer or employers' organisation on the one hand and a trade union of workers or excepted body on the other, with the object of reaching agreement regarding working conditions or terms of employment of workers. Collective agreements are the outcome of collective bargaining and as such are the property of the parties and not underpinned with legal force or enforcement by the state.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2.</u> Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

Group norms, as such, do not have any legal standing in and of themselves. They are a reference point for parties involved in the negotiation of employment conditions. There are limited circumstances in which group norms can attract contractual status. That can arise where the norm can be regarded as an implied term in the individual contract of employment where it is so well established by custom and practice in the trade or business

concerned that it may be assumed that the parties must have intended that it would be a term of the contract of employment.

All group norms are subject to relevant law (e.g. equal treatment legislation). All aspects of group norms which encompass areas where legal minima and other protections have been established by law are subject to the law and are required to conform with the law. Monetary aspects of group norms for example can be seen as making up the pay of an employee and subject to legal protections in that regard.

As a template, the following categories can be presented:

I. Unilaterally introduced benefits. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

Answer:

To take the example of a unilaterally introduced bonus and accepting that circumstances may vary, a bonus can be seen to be an element of the pay and reward system and an element of the contract of employment. As such the bonus, depending on its construction, may be subject to national law prohibiting unilateral reduction by the employer. Similarly, a pension or other benefit established unilaterally is subject to norms of equal treatment. The group norm itself cannot be enforced through the courts or other legal action but the content of the group norm where it purports to apply a legal right or conflicts with the law governing that right is justiciable. Any legal action is based on the national law regarding the term or condition of employment (e.g. minimum holiday entitlement) and not the group norm. Any element of a group norm which conflicts with employment law is void.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer:

The legal obligation of an employer is to ensure that dismissals are undertaken fairly including that the employer has behaved reasonably. Breach of a code of conduct imposed unilaterally might, depending on the circumstances, give reasonable grounds for dismissal or it might not. Much will depend on whether the Code is incorporated in the individual contract of employment. That could arise where the Code is contained in an employee handbook or is expressly drawn to the employee's attention at the commencement of the employment relationship. Issues regarding fair procedure and proportionality of penalty fall to be considered in this context. Similarly, when reductions of pay take place they must, under law, be imposed with the employee's agreement. That consent might be by way of acceptance by the employee of the employer's right to do so as part of the contract of employment. The governing law is focussed on protecting the employee from a unilateral deduction from pay imposed by the employer. In Ireland the rights of the employee are enshrined in a corpus of employment law and employer conduct and operation of group norms is obliged to conform with relevant law.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

All collective agreements in Ireland are, as clarified above, independent agreements concluded without an external authorisation. Such agreements are normally concluded between employer representatives and elected representatives of employees (shop stewards) together with a trade union official who is a permanent employee of the Trade Union. Such a collective agreement is not justiciable.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

For the purpose of implementation of the Directive "employees' representative" means an employee elected or appointed for the purposes of information and consultation.

Employers are required to arrange for the election or appointment of one or more than one employees' representative.

Where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body, employees who are members of a trade union or excepted body that represents 10 per cent or more of the employees in the undertaking are entitled to elect or appoint from amongst their members one or more than one employees' representative for the purpose of information and consultation.

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:

There are, as clarified above, generally no legal effects.

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

Where collective bargaining takes place the terms of conditions of employment in the enterprise are regulated by the collective agreement and as such apply to all employees. Similarly, where the terms and conditions of employment are unilaterally imposed by the employer they, generally speaking, apply to all employees. There is, operationally, normally no arrangement allowing for opt out by an individual employee.

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

As clarified above the formation of group norms is generally a function of collective bargaining or unilateral decision by the employer at unit or sectoral level. As such, changes to group norms would normally be the subject of identical processes. Unilateral alteration by the employer of group norms which results in a conflict with national law would be actionable through the courts and in the context of the redress afforded by the national law. Similarly, a significant alteration of a group norm could be seen by the employee and at law as an undermining of the employment contract or the employee's conditions of employment such as to constitute a constructive dismissal / constructive termination of the employment contract. The law protecting against unfair dismissal may, as a result, have application to any termination of employment at the employee's volition.

Israel

Report by Judge Asaf Harel, Israeli Haifa Regional Court, in collaboration with Judge Varda Viert Livne and Judge Yigal Plitman, President of the National Labour Court.

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?

This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:

There are numerous group norms the employer can implement in the work place. For example, the employer has the authority to hand down bonuses- whether on a yearly base, or based on performances. In addition, he may give the employees different incentives in order to encourage and enhance productivity. The employer may also draw up guidelines with respect to the manner in which the work has to be done. All of these work practices may be established by the employer himself, using his prerogative, or upon consulting and sometimes adhering to the advice of the workers' representatives. In any event, all changes must not override rights stated in General Collective Agreements in certain industrial sectors or Extension Orders, as well as mandatory labour protection laws, which are implied into all contracts of employment in Israel, and supersede any contractual stipulation, even if not written in the agreement. Such minimum employment terms and conditions include minimum vacation days per year, sick leave days, maximum working hours per day, weekly day of rest, etc.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2.</u> Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

The employer may choose to implement certain work conditions or set changes in the workplace in several ways. These can all be classified as contractual norms, which form part of the employment agreement.

One way is to receive the approval of the workers' representatives. The other is by reaching a new agreement with the individual employees. A third way – sometimes possible,

depending on the circumstances and the type of the norm involved - is to unilaterally use his prerogative.
In case the relevant norm is an established consistent practice, the party petitioning the court for its validity and enforcement- the employer or the employee- carries the burden to prove that such a behaviour is in fact a common practice, and thus may be deemed as binding upon both parties, as it created an implied change to the employee's personal contract.

As a template, the following categories can be presented:

I. Unilaterally introduced benefits. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

Answer:

Generally speaking, benefits introduced by the employer, unilaterally, mandate him from the time such a change takes place – unless the employer states while introducing that the benefit is conditional and/or for one time only. The unilaterally introduced benefits become part of the employment agreement of the specific employees and sometimes – if constitutes a consistent practice – of all employees. Said change can be manifested by action. i.e., when he begins to act in a specific way that demonstrates a shift from the original work conditions. The change can also be manifested in an agreement in the written employment contract. It should also be noted that all changes made by the employer must be legal. In any event, these changes may not be applied in a way that discriminates different groups and sections of employees (unless there is a good reason for differentiation) and must not contradict employees' rights in the workplace, guaranteed by different statutes (such as Male and Female Workers Equal Pay Law (1996), The Equal Opportunities at the Workplace Law (1988), The Equal Rights for Persons with Disability Law (1998), etc.), collective agreements or extension orders.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer:
Generally speaking, the answer is yes – as long as the code and sanctions are reasonable, done in good faith and in areas that are part of the employer's prerogative. Stating a dress code, or prohibiting employees from drinking alcohol in the workplace, are considered acceptable provisions in the company's code of conduct, even if determined exclusively by the employer as part of his prerogative. Depending on the circumstances, the employer may have the right to fire any employee that breaches the code of conduct, as long as the said code does not violate any protective rights granted to all employees, as part of the law of Israel. For example, if such dress code bars the possibility to dress according to one's religion, it may be deemed illegal, since it contradicts the freedom of religion.
As for reduction of pay- as a method of sanction- this is only allowed if stipulated in a collective agreement that applies to the workplace, and in some conditions if stipulated specifically in the personal contract as well.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

The employer has the right to reach an agreement with the workers' council, or other employees' representative organization such as shop steward, etc. The agreement may then become an implied condition in the employees' contracts. If such local agreement benefits the individual employee, then usually nobody will doubt the validity of such

agreement. However, if such local agreement is not deemed acceptable by an individual employee, that employee may choose to contest the agreement by claiming it is not a collective agreement, and therefore does not oblige him. Also, if the local agreement contradicts an existing collective agreement, it may be deemed non-enforceable. In case a breach of the agreement occurs, the individual employee himself or the workers' union may have standing before the court.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

Israel is not a member of the EU, and therefore the abovementioned Directive does not apply to its employment law. However, a similar rule applies in the Israeli employment law. It stems from case law of the Israeli National Labour Court (see, for example, Labour Appeal case No. 400005/98 **Ha-Histadrut Haclalit- The Hospitals Administrative Workers' Council v. The State of Israel** (2000)). According to said case law, in a workplace which has a representative workers' organization, an employer must hold consultations with said organization as to the effects of any substantial changes in work practices might have on the workers.

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:

If the employer and the workers' council reach an agreement, it becomes a provision in the employees' personal employment contracts, as stated above. This form of local collective arrangement may be legally binding. However, contestation of such agreement may arise- see discussion above (see answer # 2(III)).

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

For the purpose of this answer, we assume that the agreement concluded between the employer and the employees' representatives is not a collective agreement. An individual, who wishes to opt out, may claim that such a local agreement has no binding authority,

which is only given- by Israeli Law- to collective agreements. However, such local agreement may be deemed as part of the prerogative of the employer to determine work organization. In such a case, there will be no opting out for the individual employee, as long as the employer acted in good faith, and his decisions did not violate any existing law, collective agreement or extension order, as mentioned above (see answer # 1 & # 2(I)).

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:
Generally speaking, group norms that are considered as part of the employment contract should be changed through an agreement with the employees' representatives. If the workplace has no representative workers' organization, the employer will need to obtain a direct or implied consent from the individual employees. Other group norms may be regarded as part of the employer's prerogative and therefore can be changed unilaterally (when reasonable and in good faith). The distinction between these two options is not a simple one.
. If a consent is needed and not given the change will lack validity. If the employer does choose, unilaterally, to change the group norm, even one that became an implied provision in the employees' personal contract by means of consistent established practice, he is performing a breach of the employment contract and can be sued.

Norway

Report by Judge Jakob Wahl, Judge Marit B. Frogner and Judge Tron Løkken Sundet, Labour Court of Norway.

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?

This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:

Such group norms may concern working time, holiday, pension schemes, measures for senior employees, written instructions regarding health and safety, child care or other benefits for the employees. It is also quite common with internal instructions on use of alcohol or other drugs.

Norms may be established unilaterally by the employer, but are often based on consultations with workers representatives. Norway has implemented Directive 2002/14/EF regarding informing and consulting employees. In companies with 50 employees or more matters of importance to the company or to the working relationship shall be discussed with the workers representatives. It is also quite common that collective agreements contain provisions on information and consultation.

The Working Environment Act (WEA) contains regulations on staff rules. Industrial and commercial and office undertakings employing more than 10 persons have an obligation to have staff rules. Such rules shall contain the necessary codes of conduct, rules relating to working procedures, conditions for appointment and dismissals and rules relating to payment of salary, cf. WEA section 14-16 first paragraph. Staff rules shall be negotiated between the employer and elected representatives of the employees. In undertakings not bound by a collective agreement, staff rules shall be approved by the Labour Inspection Authority.

(Kan kanskje tilføye at dette etterlater nokså liten plass til andre former for group norms)

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2</u>. Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

The group norms described in question 1 may give rise to rights and obligations for the employees, and can be applied by the courts, if they are based on the individual employment contract or an applicable collective agreement.

Group norms that are not part of the individual employment contract or a collective agreement, will be seen as being based on the employer's managerial prerogative. According to this managerial prerogative, the employer, within the framework of law and agreements, has the right to organize, manage, control and distribute the work. By virtue of the managerial prerogative, the employer may change the content of the labour relationship, as long as it doesn't alter the essence of the relationship. Group norms based on the employer's managerial prerogative will constitute an obligation for the employees that the court may apply. The employer may also freely change or repeal suchrules. In order for the employee to claim rights according to group norms based on managerial prerogative, then the norms must be seen as part of either the individual employment contract or a collective agreement.

As a template, the following categories can be presented:

<u>I. Unilaterally introduced benefits</u>. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

Answer:

As described in the answer to question 2, to create an entitlement for the employees, a bonus programme or a pension scheme must be seen as part of an individual or a collective agreement. Whether this is the case, will be decided based on a broad evaluation of the agreements themselves and the specific circumstances connected to the establishment of the programme or the scheme. The involvement of the workers' representatives and/or the individual employees will be a part of this evaluation.

A programme or a scheme must in any case be applied in an unbiased and non-discriminatory manner – which may be tried in court, also if it has its base in the managerial prerogative.

There is a recent example from case law. A municipality, who as a part of their policy to make older employees to stay longer, instead of going on pension, offered older employees 100 percent pay for 80 percent work. As the economy in the municipality became tighter and the effect of the measure was uncertain, the municipality withdrew the offer, also with effect for those who actually had accepted it. Two older employees took the case to court and won the right to receive full pay for a part-time position, because, as the Court looked at it, the right to 100 per cent pay for 80 percent work had become part of their conditions of work which the employer not unilaterally could change. The decision has been appealed and will be heard by the Supreme Court autumn 2016.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer:

As a starting point should such guidelines or codes of conduct must be objective and justified in the nature of the business. If this is the case, employees must observe the guidelines and violation of them could lead to dismissal or termination of employment. Whether violations will have such consequences, depends on an assessment of the policies, the severity of the violation, if the guidelines are well known, consistently practiced, etc.

According to WEA section 14-16 second paragraph (see also answer to question 1), staff rules may not stipulate fines for breach of the rules. It is assumed that the same must apply to internal guidelines or codes of conduct. The WEA stipulates that its possible to make deductions from the wages m based on a written agreement with the individual employee, cf. WEA section 14-15 paragraph 2 c). The deduction must be limited to the amount that

exceeds the amount needed by the employee to support himself, cf. WEA section 14-15 third paragraph.

There are many examples in case law where breach of staff rules and internal codes of conduct completely or partially justifies a case of dismissal. One example is from Frostating Court of Appeals where the question was if a summary dismissal could be justified because of alcohol abuse at work and other violation of work rules. Although the employee's behavior in isolation represented a gross breach of duty, the Court of Appeal came after an overall assessment that the summary dismissal appeared as an unreasonable or disproportionately reaction. The summarily dismissal was therefore invalid, but maintained as a dismissal. The employee was granted compensation for unlawful summary dismissal.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

Such agreements may appear, although the formal requirements for considering an agreement as a collective agreement in Norwegian law are not strict.

Such agreements have basically no specific legal status in Norwegian law, and there are not special requirements for who can be a party on the employee side.
The WEA may for many parts be supplemented through agreements between employer and employee representatives. This is especially true when it comes to working time issues. Who in the specific case is the employee representative will depend upon the question to be regulated. The preparatory work of the WEA stresses that it is essential that the employees covered by the agreement are represented.

Who has procedural rights in legal proceedings concerning such agreements will depend on the character of the agreement. If it isn't a collective agreement, where the union is the

legal party, rights arising from such agreements could be included in the individual employment contract, which is enforced by the individual employee.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

The Norwegian implementation of the directive, assumes a broad understanding of the term "workers' representatives", including, but not limited to, representatives according to provisions in collective agreements. Working environment committees or other agreed cooperative bodies according to the Working Environment Act can meet the condition as well. Also on this point it is emphasized in the preparatory work of the Act that the central issue is that the employees affected by any measures are represented.

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:

In many cases, such agreements will be collective agreements. In other situations, the rights and obligations set forth in the agreements will be included in the individual employment contracts. Depending on the matters comprised by the agreement, it may also be subject to the employer's managerial prerogative.

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

It will not be possible if it is considered as a collective agreement. In some cases there is an opening in the WEA and other legislation for an employer to make an agreement applicable to all employees, if it is binding to a majority of the employees. Then individual employees could not choose to remain outside the agreement.

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing circumstances etc.)? Is there a need for a period of notice?
6. If, for instance, the group norm is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

1. If the norms deal with topics that lie within the employer's managerial prerogative and the managerial prerogative is not limited by law, individual or collective agreement, the employer will be able to make a unilateral change of the agreement.

2.-5. The answers to these questions will depend on the type of agreement and the content of the agreement.

6. The answer will depend on the type of norm in question. The right for the employer to make changes and whether changes will be viewed as a dismissal will depend on whether the norm deals with matters that are within or outside the employer's managerial prerogative. See also the answer to question 1.

Slovenia

Report by Judge Marjana Lubinič, Supreme Court, Slovenia.

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?
This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:
- safety at work measures that are not provided by law: prohibition of alcohol at work: zero tolerance, non smoking policy - work organisation
- variable working hours - work organisation
-"morning meeting" - work organisation
- prohibition of taking gifts from customers - instructions and orders of the employer
- dress code
- working clothes
- neatness
- "communication level"
The group norm are established by employer unilaterally or after consultation of workers representatives.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.
<u>Question 2</u>. Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:
If:
- concluded between the employer and workers representatives - all measures that concern work organisation has to be established with consent of workers representatives (zero tolerance of alcohol, non smoking policy, variable working hours, etc.) - mandatory for all concerned
- concluded between the employer and the group of employees - mandatory for the parts of the contract
- introduced unilaterally by the employer as an instruction or order - mandatory for all concerned (if human rights are not violated)

As a template, the following categories can be presented:

I. Unilaterally introduced benefits. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

- Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?
- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

Answer:

1.This arrangement create an entitlement for the employees to be granted the benefit if the employer committed to ensure the benefit for all employees (or those who agree to join the programme). Mere application by the employer doesn't create an entitlement for the employees. It could matter how the employee was informed and consulted about the benefits - if he was treated less favourable and this was the reason he misses an opportunity to join the programme.

2. It is a benefit and it can be a matter of an individual employment contract, but not necessary.

3. All employees have to had an equal opportunity to join the programme if it is designed generally for all employees. But the employer can create this (or similar) benefit only for e.g. managers or other similar group of employees (the determination of a group must not be discriminatory e.g. only for men or only for those who are not on sick leave etc.)

4. Examples:

The benefits for managers - a company car for private purposes, special insurrance for managers etc. - the benefit ends when mandate is expired although the "ex manager" stays in a company as an employee

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer:

1. If the employer has unilaterally introduce a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol, all employees have to respect such code, if not, there is a threat of termination of the employment. An employee who doesn't follow the code of conduct can be a subject to other kind of sanctions as well (disciplinary sanction such as a reduction of pay, a relocation).

2. The code of conduct has to be reasonable and justified considering nature of work (e.g. banks, hospitals, public services etc.) and must not violate human rights

3. Examples:

a) The bank introduced the rule that women shouldn't wear trousers (only dresses and skirts). This rule was identified as unnecessary and unreasonable.

b) The Post company had a policy (not obligatory, that is true) to test an employee whose credibility was in question with a lie detector. This policy was identified as a violation of a human rights.

c) the market chain has "a toilet visit schedule" - an employee was dismissed because she didn't follow the schedule. The court decided that dismissal was unlawful - the rule violated a human right (human dignity)

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

1. In our labour market system there are a lot of local agreements which, when they are concluded, effect all employees.

2. When bargaining the personnel is represented by workers assembly, shop steward, workers council, trade unions - the workers representatives have a right to be informed, to be consulted and to be consented

3. Each employee can go to a court individually in individual dispute; trade union or group of employees in a collective dispute.

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

- Trade union

- works council

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:

The agreement effects all employees or a certain group of employees

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

No

Changing the Terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.
In the following we will give examples on questions which could be discussed.

1. May the employer unilaterally decide to change the group norm?
2. Shall the employer before such a decision inform or consult the employee representatives?
3. Should the change be subject to a period of notice?
4. Could or should the group norm be changed through an agreement with the trade union or other employee representatives?
5. If the group norm is based on agreement with some employee representatives, could the employer terminate the agreement unilaterally? May the employer terminate the agreement only under certain conditions (force majeure, changing

circumstances etc.)? Is there a need for a period of notice?

6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:
1. The employer may change unilaterally decision of a group norm.
2. The employer has to inform or consult the employee representatives if the decision concerns work organisation, additional insurrance, disciplinary measures, safety at work (the issues are provided by law)
3. The law provides a period of notice
4. Group norm could be changed through an agreement with trade union and work council
5. If the group norm is based on an agreement with some employee representatives, the employer couldn't terminate the agreement unilaterally - the agreement could be terminated in the same way as it was adopted. The employer can terminate the agreement under certain conditions (force majeure, changing circumstances) if it has been agreed so.
6. If the group norm is qualified as a tacit clause in the individual employment contracts the employer can not change it without the consent of employees. A change would be qualified as a change of a single term; the termination of the employment contract is justified only when due to changing circumstances the work is no longer needed under the terms of the contract.

Spain

Report by Judge Maria Milagros Calvo Ibarlucea, Supreme Court of Spain

<u>Question 1:</u> Please give examples of group norms, which are common in your countries. What issues do they cover? How are the established (by the employer unilaterally or after consultation with workers' representatives etc.)?

This question concerns the practice at the labour market and you need not (at this stage) legally qualify the practice.

Answer:

When the employer instaurates unilaterally a norm or a group of norms, only can be to improve employees condition. It then becomes mandatory for the employer and to change it he has to follow the same way as to change a condition gained through individual contract or collective agreement . It may cover salary, time table interruption of work time to take some rest even something so petty as the company presents on christmas time.

Determining terms of employment

The legal qualification basis of these group norms may vary, and so may their legal effects.

<u>Question 2</u>. Please describe under which kind of legal concepts the group norms you identified in question 1 could be qualified in your labour law system and to what extent (under which conditions) such group norms give rise to rights or obligations for the employees, which could be applied in court.

Answer:

Once they are implemented they are reinforced as any other condition coming from contract or from collecdtive bargaining , depending on their extent in the staff.

As a template, the following categories can be presented:

<u>I. Unilaterally introduced benefits</u>. For example an employer has unilaterally introduced a bonus programme or a pension scheme and applied it for a number of years.

– Under which circumstances could such an arrangement create an entitlement for the employees to be granted the benefit, which he or she could claim in court? Could the mere application by the employer of such an arrangement create an entitlement for the employees? Does it matter if or how the workers' representatives and/or the individual employees has been informed or consulted about the benefits?

- If such an arrangement creates an entitlement for the employees, how is it explained legally? For instance, has the benefit converted into a condition of the individual employment contracts, or can we speak of a tacit clause in the contract?
- To what extent does the application of such a programme or practice involve questions of equal treatment of employees?
- Examples in case law?

- The arrangement creates itself the entitlement, they do not need the help of representatives. - Condition of the individual contract. - That depends on the case. It would be unequal to be given to half of the staff and not to the other half for no apparent and reasonable causes.

II. A company-level code of conduct. An employer has unilaterally introduced a code of conduct which contains a dress code or a zero-tolerance rule concerning the use of alcohol.

- Must the employees observe such codes under a threat of termination of the employment contract? Could an employee be subject to any other kind of sanction (for instance reduction of pay) if he or she does not follow the code of conduct?
- What are the limits of the contents of such codes?
- Examples in case law?

Answer: **-** reduction of pay in any case forbbiden as a sanction , but there could be a dismissal and then is goes to the judge to determine the proportionality of the measure.

III. Local agreements. You might find agreements on employment conditions concluded between the employer and a trade union, works council, a shop steward, a group of employees etc. (Here we discuss independent agreements which are not concluded under an authorization given in a federal or other higher level collective agreement.) These kinds of agreements might not necessarily fulfil the formal or other requirements of a collective agreement, but are concluded under the general freedom of contract.

- Do such agreements appear in your labour market system?
- On the employee side, who can represent the personnel in such bargaining? The shop steward or some other representative elected by the personnel? A works council or perhaps the personnel as such?
- In case of breach of such a contract, who has locus standi before a court? Each employee individually or their representative?

Answer:

-Yes

- The same representatives as for collective agreements if there are any or if there are not directly the employerwith the employees (in this case it is supossed they must be a small number)

-Both

IV. According to the **Directive 2002/14/EC** the employer shall inform and consult the employee representatives on decisions likely to lead to substantial changes in inter alia the work organisation. The Consultation shall take place with 'a view to reaching an agreement'.

1. According to the directive 'employees' representatives' mean the employees' representatives provided for by national laws and/or practices. Which are, in this context, considered the employees' representatives in your country?

Answer:

The trade unions and the company committee of employees.

2. If the employer and the employees' representatives reach an agreement on inter alia the work organisation, what are its legal effects?

Answer:
- first of all it can be imposed on the staff
- And secondly the employee affected may accept it, may claim against it for un fairness or may ask to end the contract with a compensation

3. In cases discussed above, does an individual employee have a right to opt out from the local arrangement?

Answer:

- yes, as I have said before

Changing the terms of employment

Question 3. Discuss the means of changing the different kinds of group norms identified. If the projected changes of existing standards mean an improvement for the employees, there is usually no problem. Thus this section should focus on the means for employers to change the different kinds of the group norms identified in the previous sections in a way which is less favourable to the employees.

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6. If, for instance, the group is qualified as a tacit clause in the individual employment contracts of employees, may the employer change the group norm without the consent of each of the employees? Would such a change be qualified as termination of the employment contract (a dismissal) or would the situation be considered a change of a single term of the contract?

Answer:

- No he can not

-yes, he must.

-yes if it affect just one individual, 15 days, if it collective there must be period for consultation.

-yes, it can be.

-No, he can not. In case of force majeure, changing circumstances he must initiate period for consultation or in the first case ask to labour authority for a term of suspension

-No he can not, it could entitle the individual employee to to calim before justice opt out asking for a compensation.

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