

Austrian Association of Judges

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INTERNATIONAL ASSOCIATION OF JUDGES

FOURTH STUDY COMMISSION

QUESTIONNAIRE

JUSTIFICATIONS AND CHARACTERISTICS OF ENTITIES COMPETENT TO RESOLVE LABOUR AND SOCIAL SECURITY DISPUTES

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AUSTRIA

1. What legal and / or judicial entities or authorities in your country have jurisdiction over labor and social security disputes?

Answer:

In Austria disputes on labor relationships and social security relationships are heard and decided by courts in civil procedures. In social security matters there is an administrative procedure before the procedure at the court can start.

2. a) If your country has labor and social security courts, are they separated or part of the general judicial system?

b) If your country has no labor and social security courts as part of the general judicial system, what, if any, means exist for resolving labor and social security disputes?

3. If your country has a system of labor and social security courts, what are the structural characteristics of that system?

What are the advantages and disadvantages in your country's systems for resolving the disputes? (For example: does each judge sit alone? Are lay

judges in place as decision makers; ...and so on..(Elaborate but do not limit your response to the above examples.)

Answer:

One of the main points of the Labour and Social Security Act (Federal Law Gazette No 1985/104) was to streamline the existing scattered competences by integrating all kind of labour jurisdiction in the ordinary court system but to maintain special benches and procedural provisions.

In general there exist four levels of courts, where civil matters are adjudicated; ie the district court, the courts of the federal provinces, the higher regional court and the Supreme Court in Vienna.

In labour and social insurance matters we have three-levels, ie

- 1.the Courts of the federal provinces –only Vienna has got a separate court, the Labour and Social-Security Court of Vienna-,
- 2.the Higher Regional Courts and the
3. Supreme Court in Vienna.

In the **first instance** there are the **Courts** of the federal provinces . In Labour and social Security matters there are special Benches, which are composed of one professional judge as presiding judge and two lay judges, coming from the ranks of the employers and employees

In the **second instance** the Higher **Regional Courts** have jurisdiction.

The Higher Regional Courts decide with three professional judges and two lay judges coming from the ranks of employers and employees. In general: The second instance - Regional Labour Court - is responsible for questions of facts and questions of law and the lay judges decide- with the professional judges - on both questions.

The **third instance** is the **Supreme Court** in Vienna. Now there are two benches which adjudicate labour matters and one which is competent for social insurance matters. These panels of judges consist of three professional judges and two lay judges (Section 11 of the Labour and Social-Security Act). In some exceptional cases the so called Strengthened Senat has to decide, which comprise seven professional judges and four lay judges. The **third** instance - Supreme Court - is

only responsible for questions of law; so lay judges decide in this instance - like the professional judges - only on questions of law.

When adjudicating labour and social insurance law matters the courts of the first instance have to add in their designation "acting as labour and social-security courts" while the courts of the second instance and the Supreme court add "concerning cases under labour and social security law".

Each case in labour disputes has to be brought to the **Courts** of the federal provinces acting as labour and social security courts. The appeal (called "Berufung") goes to the Higher Regional Courts. The appeal against the decision if the Higher Regional Court has to be brought - if allowed at all - to the Supreme Court.

Mediation boards are competent in the area of so-called enforceable works agreements: If in special matters listed in the Collective Employment Regulatory Act no works agreement is reached between an establishment's owner and its works council about the conclusion, changing or cancellation of a works agreement, the mediation board mediates between them at the request of one of the parties to the dispute making suggestions, striving for agreement, and where necessary making a ruling. The ruling is then valid as a works agreement.

The **Federal Conciliation Board** is competent for the custody of all tariff agreements, qualifications for collective bargaining, negotiations between parties of tariff agreements, rendering of opinions of interpretations.

Besides the trade unions there are **Chambers of Labour- public corporations**. Basically all employees of the private sector are members of these chambers by law. The Labour Chamber has to represent the economic, social, professional, health and cultural interests of employees. They provide legislature and executive with reports and suggestions in these matters.

There is also some Jurisdiction of the **Administrative Court** for instance in labor matters regarding protection of labour, disputes between public civil servant and the state and in social insurance to unemployment insurance.

4. a) Are there any movements in your country to modify your country's system for resolution in labor and social security disputes?

b) if no resolution system exists in your country, do you think it is necessary to create and develop one?

c) Is there any need to modify your current system for resolution in labor and social security disputes?

Answer:

In Austria we now have a new statute regarding **Mediation**. It is a form of voluntary communication where a neutral person, which was not involved in the conflict, uses some special communication techniques to promote the understanding of parties of the conflict of the mutual point of views so that they can solve the conflict by themselves. It is confidential. There are lists of mediators which ensure that mediators are well trained. There are only few legal provisions for this procedure.

An interesting concept of "**collective action**" is that associations sue on behalf of their members or weak employees groups with their consent. In this kind of procedure individual rights are in dispute. In Austria Works council may, within their sphere of competence, sue or be sued in a labour court to establish the existence or non-existence (**declaratory judgement**) of rights or legitimate conditions, involving at least three employees of the respective company or enterprise.

Additionally **associations and statutory representative bodies** of employers and employees who have the capacity to conclude collective agreements may, within their sphere of competence, make an application against such an entity of the other side to the Supreme Court in order to get a declaratory judgement about the existence or non-existence of rights (question of substantive law) which are of importance for three or more employers or employees.

Perhaps it would be useful to have some pretrial procedures to prevent actions.

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