Employee Participation and Collective Bargaining in Europe and China

Edited by
JÜRGEN BASEDOW, CHEN SU,
MATTEO FORNASIER and
ULLA LIUKKUNEN

Max-Planck-Institut
für ausländisches und internationales
Privatrecht

Beiträge zum ausländischen
und internationalen Privatrecht
110

Mohr Siebeck

Beiträge zum ausländischen und internationalen Privatrecht

110

Herausgegeben vom

Max-Planck-Institut für ausländisches
und internationales Privatrecht

Direktoren:

Jürgen Basedow, Holger Fleischer und Reinhard Zimmermann

Employee Participation and Collective Bargaining in Europe and China

Edited by

Jürgen Basedow, Chen Su, Matteo Fornasier and Ulla Liukkunen

Mohr Siebeck

Jürgen Basedow is Director of the Max Planck Institute for Comparative and International Private Law and Professor of Law, University of Hamburg.

Chen Su is Professor of Law and Deputy Director of the Institute of Law, Chinese Academy of Social Sciences (CASS).

Matteo Fornasier is Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law, Hamburg, and Instructor at the University of Hamburg.

Ulla Liukkunen is Professor of Labour Law and Private International Law at the University of Helsinki and Director of the Finnish Center of Chinese Law and Chinese Legal Culture.

e-ISBN PDF 978-3-16-154407-1
ISBN 978-3-16-154406-4
ISSN 0340-6709 (Beiträge zum ausländischen und internationalen Privatrecht)

Die Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available on the Internet at *http://dnb.dnb.de*.

The book was printed by Gulde Druck in Tübingen on non-aging paper and bound by Buchbinderei Spinner in Ottersweier.

Printed in Germany.

Preface

The legal framework for the supply of goods and services between private market actors is usually provided by two bodies of law: contract law and public (state) regulation. Contracts are essentially a matter of voluntary commitment on both sides, public regulation a matter of public policy. Contracting is driven by individual interests, public regulation by political decisions on matters such as working hours, safety and the need for standardization or the protection of health. The mix of private ordering and public regulation differs from market to market, but across the whole economy there is a borderline between private and public order which means that an issue is covered either by public regulation or by private agreement. This is, to a significant extent, also true of labour law. The labour market is governed, like other markets, in part by private agreements between employees and their employers and in part by public regulation. While labour relations come into being through contracts, numerous issues (such as safety and health at work) are governed by public regulations. But in labour law, since the late nineteenth century, a third body of law has evolved: rules resulting from collective bargaining between trade unions and individual employers or associations of employers.

Collective bargaining includes the right of either side to exert pressure on the other (by collective action, such as a strike and lock-out) with a view to achieving a favourable bargain. It also presupposes the right of either side to form organizations for the conduct of negotiations with the other side. At the European level, this has explicitly been acknowledged in Article 28 of the Charter of Fundamental Rights of the European Union. We find various provisions of a similar thrust in the national constitutions of Member States. At the universal level, analogous rights are ensured by Article 8 of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966 (939 UNTS 1), which has been ratified by 162 states including the European countries and the People's Republic of China. China stated upon ratification, however, that it is bound by Article 8(1)(a) only in so far as this is consistent with the Constitution of the People's Republic of China, the Trade Union Law of the People's Republic of China and the Labour Law of the People's Republic of China. While collective bargaining is considered a fundamental right of all actors in the labour market, certain limits are

imposed resulting from the right of states to shape labour relations through public regulation. Limits are also imposed on the individual freedom of employees and employers to contract. As a result, labour relations are subject to three bodies of law: individual contracts, public regulation and collective bargaining.

Collective bargaining, which has such a significant position in that triad, was the primary object of a conference – held on 16 and 17 May 2014 – on the subject of "Employee participation and collective bargaining in the era of globalization". The conference spanned the entire bargaining process, including the prior establishment of appropriate organizations and the various forms of industrial disputes. The conference programme also included workers' co-determination. Labour organizations in Germany have always considered the participation of employees – both at workplace level and in the boards of companies – to be a sibling of collective bargaining. The Nordic, or Scandinavian, labour model is based on a high level of trade union density and a strong system of collective agreements and employee participation. Chinese laws provide for systems of collective bargaining, collective agreement and employee participation, yet the coverage and function of these systems are to be improved. At the same time, Chinese labour law and industrial relations are undergoing profound changes.

Labour law, for many years, has generally been studied from the perspective of the domestic labour market. Contrary to other parts of private law, comparative labour law still is poorly developed. However, individual labour disputes with a cross-border dimension have, ever since 1900, been decided by courts in many countries. The scholarly analysis of this case law has ultimately led, in the European Union, to the adoption of a conflict rule on individual employment contracts in what is now Article 8 of the Rome I Regulation on the law applicable to contractual obligations. Several judgments of the Court of Justice of the European Union illustrate the significance of this conflict rule. They also highlight the need for a comparative perspective in matters relating to individual and collective labour law. As national frontiers progressively open up for goods and services at a universal level, the significance of comparative research in labour law will only increase in the coming years. Bearing in mind the growing importance of comparative labour law, the organizers of the conference have decided to publish its papers.

The Hamburg conference was part of the research project "Employee participation and collective bargaining in the era of globalization – Nordic and Chinese perspectives", carried out jointly by the Faculty of Law of the University of Helsinki and the Chinese Academy of Social Sciences (CASS) Institute of Law. It was made possible through the project funding of the Finnish Academy of Sciences, and organized by the Max Planck Institute for Comparative and International Private Law. We would like to express our gratitude to Alice Neffe in Helsinki and Cara Warmuth and Gundula Dau in

Hamburg for carrying out various editorial tasks and the formatting. Finally, we would like to thank Christopher Goddard in Riga and Michael Friedman and Shyam Kapila in Hamburg for contributing to the language revision.

Jürgen Basedow
Su Chen
Beijing, Hamburg and Helsinki, *Matteo Fornasier*
September 2015 *Ulla Liukkunen*

Contents

Preface V

Abbreviations XI

Part I: Setting the Stage

A. Collective Bargaining and its Interaction with State Legislation and Individual Employment Contracts

Örjan Edström
Collective Labour Law in the Nordic Countries:
The Relationship between Individual Employment Contracts
and State Legislation 3

Matteo Fornasier
Collective Bargaining in Germany and its Interaction
with State Legislation and Individual Employment Contracts 29

Louise Merrett
Collective Bargaining in the UK and its Interaction
with State Legislation and Individual Employment Contracts..... 49

CHEN Su
The Collective Contract System in China 69

Part II: Specific Issues of Collective Labour Law

B. Collective Organizations, Collective Bargaining and Collective Labour Conflicts

Etienne Pataut
Collective Agreements in Europe:
European Social Dialogue and Contractual Autonomy 83

LI Jianfei
Collective Contracts and Trade Unions in China 103

Ulla Liukkunen
The Right to Strike in the International and European Context –
Viking, *Laval* and Beyond 129

Bernd Waas
Collective Labour Conflicts in Europe 147

C. Employee Participation

Robbert H. van het Kaar
Workplace Representation in the EU 167

XIE Zengyi
Employee Participation at Workplace Level in China..... 191

Achim Seifert
Employee Participation at Board Level in Europe 209

ZHANG Hui
Employee Involvement at Board Level in China:
The Present, the Problem and the Development..... 237

List of Contributors 255

Abbreviations

AC	Akademikernes Centralorganisation – Danish Confederation of Professional Associations
AEntG	Arbeitnehmer-Entsendegesetz – Posting of Workers Act (Germany)
AEUV	Vertrag über die Arbeitsweise der Europäischen Union (*see* TFEU)
AG	Aktiengesellschaft (Germany)
AGM	Annual general meeting
AIAS	Amsterdams Instituut voor Arbeids Studies – Amsterdam Institute of Advanced Labour Studies
AKAVA	Finnish Confederation of Unions for Academic Professionals
AktG	Aktiengesetz – Stock Corporation Act (Germany)
All ER	All England Law Reports
ARBED	Aciéries Réunies de Burbach, Esch et Dudelange – Luxembourg-based steel and iron producing company
ArbVG	Diskussionsentwurf eines Arbeitsvertragsgesetzes (Germany)
ArbZG	Arbeitszeitgesetz – Working Time Act (Germany)
AÜG	Arbeitnehmerüberlassungsgesetz – Temporary Agency Work Act (Germany)
AuR	Arbeit und Recht (Germany)
BAG	Bundesarbeitsgericht – Federal Labour Court (Germany)
BAGE	Entscheidungen des Bundesarbeitsgerichts (Germany)
BetrVG	Betriebsverfassungsgesetz – Works Constitution Act (Germany)
BGB	Bürgerliches Gesetzbuch – Civil Code (Germany)
BGBl.	Bundesgesetzblatt (Germany)
BGH	Bundesgerichtshof – Federal Court of Justice (Germany)
BOE	Boletín Oficial del Estado (Spain)
BUSINESSEUROPE	Union of Industrial and Employers' Confederations of Europe (formerly UNICE)
BVerfG	Bundesverfassungsgericht – Constitutional Court (Germany)
BVerfGE	Entscheidungen des Bundesverfassungsgerichts (Germany)
BVerwG	Bundesverwaltungsgericht – Federal Administrative Court (Germany)
CA	Court of Appeal
CASS	Chinese Academy of Social Sciences
CBM	Social and Economic Council Committee on the furthering of worker involvement

CDU	Christlich-Demokratische Union (Germany)
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEEP	European Centre of Employers and Enterprises providing Public Services
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CETS	Council of Europe Treaty Series
cf.	confer
CFA	Committee on Freedom of Association
CFI	Court of First Instance
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Reports
Co.	Company
CSU	Christlich-Soziale Union (Germany)
DERPI	Département d'étude des relations privées internationales (France)
DGB	Deutscher Gewerkschaftsbund – German Confederation of Trade Unions
e.g.	exempli gratia
E.L.Rev.	European Law Review
EBLR	Employee board level representation
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
ed.	edition
ed./eds.	editor(s)
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EIROnline	European Industrial Relations Observatory Online
ELJ	European Law Journal
Emp LB	Employment Law Bulletin
EqA 2010	Equality Act 2010 (United Kingdom)
ERA 1996	Employment Rights Act 1996 (United Kingdom)
et al.	et alii
et seq.	et sequens
etc.	et cetera
ETS	European Treaty Series
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EUV	Vertrag über die Europäische Union (*see* TEU)
EuZA	Europäische Zeitschrift für Arbeitsrecht (Germany)
EWC	European Works Council

EWCA Civ	England and Wales, Court of Appeal (Civil Division)
EWG	Europäische Wirtschaftsgemeinschaft (*see* EEC)
fn.	footnote
FTF	Danish Confederation of Professionals
GEDIP	Groupe Européen de Droit International Privé
GG	Grundgesetz – Constitution (Germany)
GmbH	Gesellschaft mit beschränkter Haftung (Germany)
GS	Großer Senat
G.U.	Gazzetta Ufficiale (Italy)
HR	Human Resources
HRC	Human Rights Committee
I&C	Information and consultation
id.	idem
i.e.	id est
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICR	Industrial Cases Reports
IJCL	International Journal of Comparative Labour Law and Industrial Relations
ILJ	Industrial Law Journal
ILO	International Labour Organization
IRLR	Industrial Relations Law Reports
ITF	International Transport Workers' Federation
JCP	La Semaine Juridique (France)
JCP S	La Semaine Juridique – Social (France)
JORF	Journal officiel de la République française (France)
JZ	Juristenzeitung (Germany)
LO	Labour organization
LOD	Landsorganisationen i Danmark – Danish Federation of Trade Unions
LON	Landsorganisasjonen i Norge – Norwegian Federation of Trade Unions
LOS	Landsorganisationen i Sverige – Swedish Trade Union Confederation
Ltd	private limited company
MD&A	Management Discussion and Analysis
MiLoG	Mindestlohngesetz – Minimum Wage Act (Germany)
MLR	Modern Law Review (United Kingdom)
NHO	Næringslivets Hovedorganisasjon – Confederation of Norwegian Enterprise
NJB	Nederlands Juristenblad (Netherlands)

NJW	Neue Juristische Wochenschrift (Germany)
NMWA 1998	National Minimum Wage Act 1998 (United Kingdom)
no./n.	number
NZA	Neue Zeitschrift für Arbeitsrecht (Germany)
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
p./pp.	page(s)
para./paras.	paragraph(s)
PDG	Président-Directeur-Général (France)
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht – Rabel Journal of Comparative and International Private Law (Germany)
RdA	Recht der Arbeit (Germany)
RDT	Revue de Droit du Travail (France)
RJS	Revue de Jurisprudence Sociale (France)
Rev. Crit. DIP	Revue Critique de Droit International Privé (France)
RGBl.	Reichsgesetzblatt (Germany)
RMB	renminbi – official currency of the People's Republic of China
SACO	Sveriges Akademikers Centralorganisation – Swedish Confederation of Professional Associations
SAF	Svenska Arbetsgivareföreningen – Swedish Employers' Confederation
SAK	Suomen Ammattiliittojen Keskusjärjestö – Central Organization of Finnish Trade Unions
Sàrl	Société à responsabilité limitée (France)
SCE	Societas Cooperativa Europaea – European Cooperative Society
SE	Societas Europaea – European Company
SER	Sociaal-Economische Raad – Social and Economic Council (Netherlands)
SNB	Special Negotiating Body
SPD	Sozialdemokratische Partei Deutschlands (Germany)
STTK	Finnish Confederation of Salaried Employees
TCO	Tjänstemännens Centralorganisation – Swedish Confederation for Professional Employees
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TUC	Trades Union Congress
TULRCA 1992	Trade Union and Labour Relations (Consolidation) Act (United Kingdom)
TVG	Tarifvertragsgesetz – Collective Bargaining Act (Germany)
UAW	United Auto Workers (USA car manufacturers' union)

UEAPME	Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises – European Association of Craft, Small and Medium-Sized Enterprises
UK	United Kingdom
UN	United Nations
UNICE	Union of Industrial and Employers' Confederations of Europe (*now known as* BUSINESSEUROPE)
Unio	Confederation of Unions for Professionals (Norway)
UNTS	United Nations Treaty Series
US/U.S./USA/U.S.A.	United States of America
v./vs.	versus
ver.di	Vereinte Dienstleistungsgewerkschaft – United Services Trade Union (Germany)
WTR 1998	Working Time Regulations (United Kingdom)
ZfA	Zeitschrift für Arbeitsrecht (Germany)
ZGR	Zeitschrift für Unternehmens- und Gesellschaftsrecht (Germany)
ZRP	Zeitschrift für Rechtspolitik (Germany)

Part I:
Setting the Stage

A. Collective Bargaining and its Interaction with State Legislation and Individual Employment Contracts

Collective Labour Law in the Nordic Countries: The Relationship between Individual Employment Contracts and State Legislation

Örjan Edström

I. Introduction 3
1. The collective dimension 4
2. EU law and some other international legal instruments 5
II. Basic features in the development of Nordic labour law 6
1. The liberal era – the beginning of a new order 6
2. Self-regulation, basic agreements and arrangements 7
3. Legislation confirming self-regulation 8
4. Collective labour law today 9
5. Labour market organizations and trends 11
III. The trade union representative 13
IV. Industrial action 14
V. Codetermination – information and consultation 15
VI. The individual contract and labour law 17
1. Employment protection 18
2. Discrimination law 19
VII. Challenges and impact from EU law 21
VIII. Collective regulation of working life together with state intervention? 24
1. Self-regulation within the framework of law 24
2. Self-regulation and the development of a reflexive law 24
3. Regulations on the individual employment contract 26
4. International influences and enforced individual rights 26
IX. Final conclusions 27

I. Introduction

The aim with this article is to highlight and briefly analyse basic industrial relations features with a focus on labour law in four Nordic (i.e. Scandinavian) countries, including both the collective dimension, with collective bargaining regulations, and certain legislation that directly regulate the individ-

ual employment contract. The article will give an overall account of the situation and developments in Denmark, Norway, Sweden and Finland.[1]

Further, the development in Nordic labour law will be discussed, paying attention to the collective agreement model's position in a legal environment complete with substantive laws and rights connected to the individual labour contract.

To begin with, some historical notes on the development of Nordic labour law will be presented. Thereafter I will set out the labour law regulating, primarily, the collective dimension (which means the relationships between the organized parties on the labour market), including regulations on industrial action and codetermination and more.

Collective bargaining and collective agreements play a fundamental role for the individual employee, and an overview of labour law regulating the individual worker's rights vis-à-vis the employer in the employment contract will be made in respect of employment protection and discrimination.

The article will not deal with rules on board representation or work environment protection; i.e. labour law substantially regulated through public law, although the labour market parties in collective agreements today have agreed on the way in which to apply these laws and, in particular, matters concerning workers environment, safety committees, etc.

Concerning international law, the article will in the main only deal with European Union (EU) law, even if there are also other international legal instruments that could be observed. In particular the focus will be on the conditions and the development of the private sector.

1. The collective dimension

The collective dimension in employment relations is fundamental in the Nordic countries.[2] Important aspects of the employer – employee relationship are ruled by collective agreements. These agreements are the result of collective bargaining between trade unions and employers' associations.

Further, both the globalization process, the internationalization of labour relations and the integration process in the EU challenge not only the national state but also the Nordic model of labour market regulations. Meeting new international standards and commitments while at the same time maintaining a Nordic model will sometimes mean legal conflicts that must be resolved.

---

[1] Formally, also Iceland is included as a Nordic country but will not be dealt with here.

[2] A useful source for basic information concerning industrial relations in the Nordic countries (as well as other countries in Europe) is the Eurofound; for country profiles, see <http://eurofound.europa.eu/observatories/eurwork/comparative-information/industrial-relations-country-profiles>. Another comprehensive source is *Peter Wahlgren* (ed.), Stability and Change in Nordic Labour Law, 2002.

Even if the Nordic model of industrial relations in general is considered to be founded on a collectivistic tradition putting emphasis on the role of trade unions and collective bargaining, there are important varieties between the Nordic countries. Further, there are other significant issues which relate to the regulation of individual workers' rights in Nordic labour law. For instance, the development of legislation on employment protection and discrimination has meant substantial restrictions for collective bargaining.

2. EU law and some other international legal instruments

Three of the Nordic countries dealt with in this article are members in the EU; Denmark became affiliated to the European Community (EC) in 1973 and Sweden and Finland in 1995. Norway has been a part of the Agreement on the European Economic Area (EEA Agreement)[3] since 1994 and is, accordingly, bound to follow EU labour law.[4]

Hence, EU law must, together with certain other legal instruments in international law, be considered and followed by the Nordic countries.

In particular, there are some EU directives that should be considered in connection with collective and individual rights respectively.

The EU Charter on Fundamental Rights in the European Union[5] values the workers' right to information and consultation within the undertaking (Article 27) and the right to collective bargaining and industrial action as fundamental rights (Article 28). Beyond that, the EU Charter also protects the employed individual in several respects, such as the right to non-discrimination (Article 21), protection against unjustified dismissal (Article 30) and the right to fair working conditions (Article 31).

Compared with labour law in the Nordic countries, EU law puts more emphasis on individual rights and this fundamental difference has meant new restrictions for collective bargaining, and has an important impact on labour law in the Nordic countries.

The Nordic countries are also bound to follow the European Convention on Human Rights (ECHR).[6] Article 11 of the ECHR protects the freedom of association, and from the case law the European Court of Human Rights (ECtHR) it follows that this right also embraces a right to collective bargain-

---

[3] [1994] OJ L 1/1.

[4] The EEA Agreement entered into force on 1 January 1994 and brings together the EU Member States and the three EEA states associated to the European Free Trade Association (EFTA) – Iceland, Liechtenstein and Norway – in the EU Internal Market.

[5] [2012] OJ C 326/391.

[6] Concerning the link between EU law and the ECHR, the Treaty of the European Union (TEU) claims in Article 6(2): "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties".

ing and industrial action.[7] Nonetheless, even if there has been some case law from the ECtHR involving the Nordic countries, or otherwise is of relevance for this area of law, this article will not deal with the ECHR.

Further, together with other European countries the Nordic countries have ratified many conventions from the International Labour Organization (ILO); including, for instance, the ILO Conventions No. 87 on freedom of association and No. 98 on collective bargaining.[8]

II. Basic features in the development of Nordic labour law

1. The liberal era – the beginning of a new order

The breakthrough of liberal ideas in the second half of the nineteenth century meant the abolition of the former pre-capitalistic restrictions concerning the right to exercise trade and more.[9] The economy and labour relationships were liberalized with the establishment of the free work contract; i.e. this was the end of the forced labour era.

The liberal approach meant the establishment of a non-interventional policy from the state. In spite of this, the state did not hesitate to intervene through the criminal law in order to hinder workers and the growing trade union movement from participating in strikes and collective actions on the labour market.[10] Furthermore, there was a close connection between the trade unions and radical political movements arguing for socialism and a new order in society.

---

[7] See also the 1996 revised European Social Charter and Article 5 concerning the right to freedom of association, and Article 6 on the right to collective bargaining.

[8] ILO Convention No. 87 of 1948 on the Freedom of Association and Protection of the Right to Organise and ILO Convention No. 98 of 1949 on the Application of the Principles of the Right to Organise and to Bargain Collectively. For an overall picture of the current situation, see *International Labour Conference* (ILO), Report of the Committee of Experts on the Application of Conventions and Recommendations, The Application of International Standards in 2014 (I), (Report III, Part 1a, ILO 103rd Session, 2014), 2014.

[9] Concerning laws on commerce and trade, this was the case in Norway in 1839, in Denmark in 1862, in Sweden in 1864 and in Finland in 1868. For a brief comment on the following development in Nordic labour law, see for instance *Ole Hasselbalch*, The Roots – the History of Nordic Labour Law, in Wahlgren (fn. 2) 11–35.

[10] For instance, in Denmark, a formal ban on strikes was introduced as soon as 1800, even if a new democratic Constitution in 1849 opened the door for the forming of private organizations, facilitating also the workers' strive to organize in respect of their employment; *Hasselbalch* (fn. 9) 16. Another example is Sweden, where changes to the criminal law were made in 1893, 1897 and, in particular, 1899 in order to counteract strikes.

2. Self-regulation, basic agreements and arrangements

In circumstances involving the liberalization of markets, a state that was reluctant to intervene in order to secure and stabilize the labour market situation, the workers' general vulnerability and the establishment of trade unions with often radical political ideas, the labour market parties themselves began to regulate their relations, establishing a new balance on the labour markets.

In Denmark a basic agreement between the labour market parties – although not complete – was concluded in 1899, and called the "September Compromise". Later, after a labour conflict in 1908, the "August Committee" recommended the introduction of the Permanent Arbitration Court in 1910 for the resolution of disputes and the development of case law concerning labour contracts (now the Labour Court).

Further, the "August Committee" recommended some standard rules relating to the handling of labour disputes (i.e. the "Normen" providing rules on conciliation, negotiations and arbitration), and from these fundamentals the Danish collective agreement system has continued to be developed by the parties.[11]

Also, in Norway, a basic agreement was concluded between the labour market parties in 1902, providing that disagreements between them should be settled by mediation and possibly arbitration. Even though the agreement was soon terminated, a basic structure for dealing with conflicts in the future had been established and integrated into the collective agreements.

In 1935 a new Basic Agreement on the national level was settled on these fundamentals. The still working Basic Agreement in Norway also regulates, for instance, industrial action in the form of sympathy actions, shop stewards and collective dismissals.

In Sweden the state's reaction towards the growing trade union movement was comparatively tough. At the turn of the century strikes and other similar industrial actions were often considered to be a breach of the employment contract. However, in 1906, the "December Compromise" was agreed upon between the employers' and the blue-collar workers' organizations.

The "December Compromise" meant that the right to associate was accepted by the employers, and in return the trade unions recognized the employer's right to lead and distribute work as well as to hire and fire workers.

Following this arrangement, collective agreements were concluded between the employers and the blue-collar workers' trade unions on the labour market. It was not until the end of the 1920s that laws were enacted, with the exception of the previously 1906 Act on Mediation in Labour Disputes.

---

[11] Also the Official Conciliator's Act – recommended by the August Committee – should be mentioned, regulating the procedure used by the public conciliation and mediation service. See *Ole Hasselbalch*, Labour Law in Denmark, 2nd ed. 2010, 36.

In Finland, and in the labour law perspective, the liberalization process meant the abolition of formal legal restrictions on trade unions. However, unions still had to be recognized by the state, but in 1906 freedom of association was enacted, and protected by the Constitution in 1919. Further, in 1922, the protection of freedom of association was further reinforced by the Employment contract act.

The Finnish situation was peculiar since Finland became independent from Russia in 1917; this was followed by a civil war between the "Whites" and the "Reds", which for a long period strained relations between workers and employers. Even though the building of trade unions had begun in the late nineteenth century, leading to the establishment of a trade union confederation, it had been oppressed by the Russian authorities.

The trade union movement in Finland was for a long time influenced by communist ideology, and in 1930 many unions were dissolved on the suspicion of being involved in "subversive activities". It was not until after World War II that the Finnish trade unions became generally accepted by the employers.

3. Legislation confirming self-regulation

In the Nordic countries state labour law was more or less developed by building on the self-regulatory private arrangements, often meaning that the already established agreements on procedures etc. were confirmed by the legislature.[12]

Since, in general, the collective agreements did not embrace, for instance, white-collar workers, there was also a need – as was the case in Sweden – for state regulation in order to extend and establish the collective structure and trade union rights on the whole labour market.

Considering these features and the interplay between collective self-regulation and state legislation, it might be seen remarkable that in Denmark there are no specific laws regulating the right to association, collective bargaining, collective agreements, peace obligations, industrial actions or shop stewards. Therefore, the important Danish national regulations are still to a large extent to be found in collective arrangements between the labour market parties.[13]

In Norway the legislation on labour disputes concerning the conclusion of collective agreements, mediation and more came into force in 1916, and in 1927 a revised Labour Disputes Act was adopted. The act has regulations concerning collective agreements, industrial actions, mediations and sanc-

[12] For a brief account, see *Reinhold Fahlbeck*, Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features, in Wahlgren (fn. 2) 103–106.

[13] *Fahlbeck* (fn. 12) 105.

tions.[14] It is still the core legislation for collective labour law, even if further amendments influencing collective labour law also have been made.

In Sweden the legislation relating to collective agreements was enacted by the Riksdag in 1928, at the same time as the enactment of legislation relating to the labour court. The 1936 Act on the Right to Association and Negotiation was founding a base for collective bargaining and trade union rights, reinforcing and extending these rights to embrace white-collar workers and other groups that had not been strong enough to establish collective agreements with the employers.

In Finland the laws for the protection of labour peace had been made in 1924 and repealed in 1945. In addition, the Collective Agreements Act came into force in 1924, and in 1946 the act was modernized, forming the legal basis for the concluding of collective agreements. The Labour Court was established in 1924, and one year later, the legislation on conciliation was in force.[15]

Considering its history and connection with Russia, Finland was a little late in developing its labour law – in principle founded on agreements from collective bargaining – compared with the other Nordic countries. In 1940 an overall agreement was concluded on the basic principles that apply between the parties. After that more regular agreements between the labour market parties were concluded in 1944 and thereafter, but the Basic Agreement from 1946 still forms the basis for how the system works, even if many subsequent laws have completed the picture.

4. Collective labour law today

The regulations on collective bargaining are amounting to a procedural structure for the collective bargaining between the labour market parties. Accordingly, to a very large extent, working conditions are settled through self-regulation by the parties themselves, even if substantive individual labour law often means the setting up of a floor with minimum requirements for the collective bargaining outcome.

Traditionally collective bargaining has been very centralized, even if the bargaining activities in practice have taken place at three levels: the national level, the industry wide/branch level and at the local company/workplace level. In principle, an agreement on a higher level binds the lower level and, in doing so, creates restrictions for the parties bargaining on, for instance, the workplace level.

---

[14] For an overview of the Norwegian industrial relations and legislation, see *Espen Løken/Torgeir Aarvaag Stokke*, Labour Relations in Norway, Fafo-report 2009:33, 2009.

[15] *The Finnish Ministry of Employment and the Economy*, Finnish Labour Legislation and Industrial Relations, 2012, 30, available at: <https://www.tem.fi/files/31813/Finnish_Labour_Legislation.pdf>.

In general, the trade unions have striven to maintain the centralized structure of collective bargaining, but for many years there has been – as in other European countries – a tendency towards decentralized bargaining at the local level.[16]

The system has become more open even for individual bargaining within the framework of the collective agreements, for instance concerning wages. That is the case particularly in the private sector, while a comparatively more centralized bargaining structure still is upheld on the public sector, even if there has also been increased room for more individualized contracts.

Concerning the country level, Denmark is, as mentioned above, an example where the foundation for fundamental rights concerning rights of association, collective bargaining and collective agreements are established through the Basic Agreement, originally from 1899. The agreement also embraces regulations on peace obligation, industrial actions and shop stewards.

However, there is (beyond EU law with the Charter and the ECHR) in Denmark, from 1982, certain legislation on protection against dismissals in violation of the freedom of association, providing legally based protection.

In Norway important regulations are found in the Basic Agreement of 1935, but here we find regulations in law on important matters. In the previously mentioned 1927 Labour Disputes Act there are also rules on parliamentary intervention if there are failures in collective bargaining.[17] Further, important regulations have also been introduced through amendments of the Work Environment Act from the 1970s.

In Sweden the Saltsjöbaden Basic Agreement concluded in 1938 laid down the regulations for collective bargaining and industrial actions, including bargaining for the prevention of industrial conflicts. The agreement from 1938 has of course been amended, but it is still in force, even though the parties for some years have lobbied for the creation a modernized Basic Agreement.

Fundamental regulations in law are now found in the 1976 Codetermination Act. The act was to a very large extent built on previous legislation from 1936 on freedom of association and collective bargaining and the 1906 law on mediation in industrial disputes (including amendments made in 1920).

The Codetermination Act was completed, with new regulations on mediation, in 2000, which has meant completing collective agreements on bargaining orders to apply to different sectors of the labour market. Labour disputes have since 1974 been regulated by the legislation on the court procedure in labour disputes.

Finally, in Finland the basic structure for the freedom of association and collective bargaining etc. in practice was established after World War II.

---

[16] *European Commission*, Industrial Relations in Europe in 2012, Commission Staff Working Document, 2013, 25.

[17] *Fahlbeck* (fn. 12) 105 et seq.

The general law on association is applicable to organizations on the labour market. In 1946 the general regulation on collective agreements was taken and in 1962 the former legislation on mediation was replaced with the new Act on Mediation in Labour Disputes, and new regulations on mediation came into force.

5. Labour market organizations and trends

For the proper functioning of the labour market, trade unions and organizations are crucial. Following from freedom of association, membership is voluntary, but it is of great importance for the system's legitimacy that workers and employers are organized.

However, in the recent years there has been a declining trend in the trade union organization rate on the labour markets all over Europe. This development in general has also been observed by the European Commission and discussed as a problem for the development of European industrial relations.[18]

This trend is in particular considered to be a problem for the employee in general, but in practice also employers benefit from having trade unions to deal with as well, as this set-up facilitates a well-functioning labour market if the collective bargaining is well coordinated (keeping down transactional costs).

This general trend with a decline in trade union membership is clear also in the Nordic countries. For instance, while in Sweden 85% of the workers were organized in 1993, only 71% were organized in 2007.[19] However, the organizational rate in the Nordic countries is comparatively high. In the EU Member States the corresponding figure in average in 2008 was around 23% among employed workers.[20]

An explanation to this trend in the Nordic countries is high unemployment rates (even though the unemployment figures are low compared with southern Europe), deregulation of labour markets and cut-downs in the social security system.[21]

As stated above, the trade union movement in the Nordic countries is considered to be comparatively centralized. In each country there are three or four dominating organizations on the central level, covering different branches, and mostly each branch has separate nation-wide organizations both for

---

[18] *European Commission* (fn. 16). See also, for instance, the previous corresponding annual reports *European Commission*, Industrial Relations in Europe in 2008, 2009, 20 et seq., also available at <http://ec.europa.eu/social/BlobServlet?docId=2535&langId=en>.

[19] See: <http://www.nordiclabourjournal.org/nyheter/news-2012/article.2012-09-14.0381597146>.

[20] *European Commission* (fn. 18) 20 and (fn. 16) 24.

[21] See *Gunhild Walling*, Unions in retreat across Europe (available at <http://www.nordiclabourjournal.org/nyheter/news-2012/article.2012-09-14.0381597146>).