Conciliation, mediation and arbitration

Danish report

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I The system of labour relations

1 The actors

The system of organizations and collective agreements is the cornerstone of the system of labour relations on the Danish labour market. The level of organization for both employers and employees is with a few exceptions very high in all sectors of the labour market.

The average level of unionisation on the employee side is around 80-85% both in the private and the public sector. Compared to other European countries the trade union movement is practically speaking very homogeneous. This is not to say that there isn't any rival organizations to the well established unions. Especially the Christian labour movement have gained members in recent years although not in a way to be a real threat to the traditional craft and branch unions.

The union structure is of very complex nature with at least three levels. At the top level we have four main organizations: The Danish Confederation of Trade Unions (Landsorganisationen I Danmark, LO) which beyond any doubt is the dominating one. Furthermore we have the Confederation of Salaried Employees and Civil servants in Denmark) (Funktionærernes og Tjenestemændenes Fællesråd, FTF), the Danish Confederation of Professional Associations) (Akademikernes Centralorganisation, AC) and the Organization of Managerial and Executive Staff in Denmark (Ledernes Hovedorganisation, LH).

The second level is the craft and branch unions. The structure on this level is markedly split with a great numbers of different craft unions. Education and profession is still important organizational criteria. In recent years there has been a development in the direction of a branch-of-industry principle but it seems to be a very slow process at least in major parts of the labour market.

Both the main organizations and the craft and branch unions operate on a national basis. They are, however, in most of the sectors supplemented by local organizations. This third level is of great importance since it gives the national based unions a local voice both outside and inside the plant. The inside organizations are so called "clubs" or "committees" for specific categories of workers (usually with the local shop steward as chairman).

The employers are organized in three different parts of the labour market: The private sector, the municipal sector ant the state sector. The average level of private employers is probably around 50% (saying that 50% of the private workforce is employed in companies belonging to an employers' organization).

In the private sector the dominant main organization is Danish Employers' Confederation (Dansk Arbejdsgiverforening, DA). DA is nearly organizing all parts of the private labour market including industry, building and construction, commerce, service, transport etc. The members are employers' organizations, e.g. Confederation of Danish Industries (Dansk Industri, DI). The employers are to some further extent than the unions organized after a branch-of-industry principle although the development in this direction is far from finished.

There are two minor main organizations besides DA: Danish Confederation of Employers' Associations in Agriculture (Sammenslutningen af Landbrugets Arbejdsgiverforeninger, SALA) and Danish Employers' Association for the Financial Sector (Finanssektorens Arbejdsgiverforening, FA). The three main organizations are practically speaking not rivals.

In the public sector the Minister of Finance functions as "organization" for all state authorities, while the municipal authorities in principle is free to stay out of the organizations if so wished. In practice, all of the municipal authorities is belonging to either The National Association of Local Authorities in Denmark (Kommunernes Landsforening, KL) or Danish Federation of County Councils (Amtrådsforeningen I Danmark, ARD). They are not rivals.

The main organizations on employers' and employees' have as one of their central functions to conclude so-called "basic agreements" on central issues relating to the collective bargaining system as such, including rules on industrial action and peace obligation. The unions and employers organizations on the craft and branch level are mainly concluding collective agreements on wages and working conditions. The local parties is concluding supplementary agreements.

It is estimated that 80-85% of the employees are covered by a collective agreement. In the public sector the level is nearly 100%, while it in the private sector is around 60-70%. Especially professionals in the private sector are not covered by a collective agreement.

2 Rules

One of the main characteristic's of the Danish labour market is the cooperative attitude on both the employers and the employees side. The cooperative attitude is the case in both the internal relations between the two sides (on central as well as local level) and in the external relations between the organizations on the one side and the state authorities on the other hand.

The cooperative attitude has to be seen in a historical context. In the late 19th century the labour market was dominated by a large numbers of collective conflicts typically between a local union and a single employer. It is estimated that the number of industrial conflicts increased 1000 in the period from 1890 to 1899. One of these minor conflicts turned in 1899 in to a national wide conflict which lasted for more than three months and vasted more than 3 million days of work.

The September Compromise between the two dominant organizations on the labour market, DA and the LO, brought an end to the conflict. The central feature of this early basic agreement was the mutual recognition by the opposing parties. The trade unions recognised the employers' managerial prerogatives in return of the employers accept of the right of employees to organise and negotiate on a collective basis. The September Compromise was based on a mutual understanding of negotiations and agreements between organizations on a central level as the future system of labour relations laying down principles for collective bargaining between the organizations.

The September Compromise didn't really solve the handling of conflicts related to interpretation and breaches of collective agreements. This problem was, however, handled in a very effective way already few years after the establishing of the "September Compromise". In 1908 the government – due to high level of industrial disputes this year – formed the so-called "August Committee" with the explicit aim of reducing the frequency of industrial disputes. The chairman was appointed by the government (a judge), while its ordinary members were appointed by the two parties in the September Compromise (DA and LO). The "August Committee" introduced a very sharp distinction between disputes over interests and disputes over rights.

As a direct result of the work of the Committee, The Danish Parliament passed two acts in 1910: The act on Conciliation in Industrial Disputes (the Public Conciliator Act) for handling of conflicts of interest and an Act on the Permanent Court of Arbitration (from 1960 the Industrial Court) for handling of legal conflicts, especially sanctioning of breaches of collective agreements. Furthermore, the main organizations in 1908 had agreed upon a system of conciliation in all kinds of local conflicts and arbitration in legal conflicts as far as interpretation of collective agreements concerns. The primary goal of both the legislation and the agreement is peaceful settlements in all kinds of disputes on the labour market.

This early legal system still forms the basis in this area. There have been some changes through the years but never in a more fundamental way. This means that the basic material principles are laid down in so-called basic agreements (the successors of the September Compromise) and in the case law from the Industrial Court. The procedural rules – including rules on conciliation and arbitration - are based on legislation supplemented by collective agreements. The legislation is as a central feature based on consensus between the dominant organizations, in practice DA and LO as the dominant organizations in the private sector of the labour market.

In a European perspective it is notably that the Danish system of collective bargaining is not based on positive rights laid down in the Constitution and legislation. The rights are instead laid down in mutually binding collective agreements..

3 Conflicts

As mentioned above Danish labour law is based on a very sharp distinction between disputes of interest (establishing and renewal of collective agreements) and disputes over rights (interpretation and breach of collective agreements).

Seen from a practical point of view a dispute will as a starting point be classified as a dispute over rights making industrial action an illegal mean. The settlement has to take place in a peaceful way by conciliation and finally by a judicial decision from an Industrial Arbitration Court or the

Industrial Court. This institutionalised way of handling conflicts is by many suggested to secure a low level of industrial action.

The system is limited to disputes between employers and employees covered by a collective agreement. Outside the scope of the collective bargaining system – employers without a collective agreements – there isn't a similar system of handling of disputes. This means that solving conflicts in principle is up to the individuals by referring cases to courts or special administrative bodies.

The organizations are, however, without any doubt solving a notably part of the disputes due to the fact that both the employer and the employees can be members without being covered by a collective agreement. This is especially the case with many professionals in the private sector. The conciliation activity in these cases are of course of a conventional nature – it is, however, a normal procedure for the organizations to cooperate in favour of a peaceful solution of the conflict rather than refer the conflict to an ordinary court.

II Labour conflicts and the means for solution

1 Legal typology of conflicts

In Danish labour law there is no specific legislation on collective action as such including the right to strike and the peace obligation. There are, however, still two central pieces of legislation, the Consolidated Act no. 192 of 6 March 1997 on Conciliation in Industrial Disputes and the Act no. 183 of 12 March 1997 on the Industrial Court.

The legislation is of a procedural nature establishing and regulating the Conciliation Board and the Industrial Court. In reality it is, however, resting on a very strict distinction between disputes over interest and disputes over rights. This is the basic typology of conflicts – not only in the legislation but also in the basic agreements.

Disputes over interest refer mainly to concluding of collective agreements both establishing of a collective relationship (concluding of an original agreement) and the renewal of a existing agreement after it has expired in accordance with it's formal rules. Disputes over rights refer to disagreement in the interpreting of a collective agreement or one of the parties breach of the agreement. This distinction between disputes over interpretation and breaches of a collective agreement is another basic typology of conflicts although not as harsh and important as that between disputes over interest and disputes over rights.

2 Notion of collective conflict

There is no explicit notion of collective conflict in the legislation nor in the basic agreements or any other collective agreements.

It is, however, explicitly stated in the basic agreements - which covers the major parts of the employers and employees - that it is up to the competent body of the organization to decide on an industrial action. The individual member (employer as well as employee) is obliged to comply with the organizational decision under the threat of expulsion from the organization. This means in practice that an (legal) dispute over interest in all circumstances take place between a union on the one hand and an employers organization or a single employer on the other hand.

The Act on the Industrial Court presupposes that an illegal collective action either is decided by an organization or is established by members of one such acting together. It is probably a collective action if two members of a union is acting together.

It is furthermore a conflict of a collective nature if the dispute involves the collective agreement in force whether an (illegal) industrial action has taken place or not. All disputes on interpretation or breaches of collective agreements are considered to be collective conflicts in that way that they have to be handled in accordance with the formal rules in the Act on the Industrial Court or the Norm on handling of industrial disputes (conciliation and arbitration).

This means for instance that all kinds of disputes between management and employees about restructuring over firms, lay offs etc. are considered to be of a collective nature if the parties involved are covered by an collective agreement. If this is not the case, the dispute is of an individual character in the way that it has to be handled in accordance with the normal rules for the individual employment conditions and by the ordinary courts.

The notion of collective conflict is as a result of the distinctions in the procedural system in an extreme grade dependant of whether the parties involved are covered or not covered by a collective agreement.

3 Means envisaged for solution

As regards collective action in disputes over interest the starting point is that the dispute have to be solved by the parties themselves by negotiations and industrial actions if settlement is not reached in a peaceful way.

The negotiations between the parties take place within the procedural rules in the legislation on Conciliation in Industrial Disputes (the Public Conciliators Act) and the basic agreements between the main organizations. The Conciliation Board is a state authority of an special and independent character. The conciliators are formally appointed by the minister of employment but the Conciliation Board as well as the single conciliator works independently.

It is not up to the Conciliation Board to decide on the legality of an industrial action. This is entirely a matter for the Industrial Court as a legal question. The Court has a very liberal attitude to industrial action so the Court doesn’t play any significant role in disputes over interest. This is even the case in disputes between trade unions and single employers. The founding point of view is that conflicts of interest isn’t really a judicial matter but a political matter. If necessary the Danish Parliament itself will bring an industrial conflict to an end by passing a legislation on the prolongation of the specific collective agreements in question. This has happened occasionally since the first political intervention in 1933.

As regards disputes over rights the peace obligation forms the basis for the solutions. These conflicts should – on the contrary to disputes over interest - in no circumstances be solved by use of industrial action. Disputes over rights have to be solved according to the procedural rules on mandatory conciliation and binding judicial decisions.

The far reaching peace obligation is one of the main characteristic of the Danish system. It is legally binding on both the parties in the collective agreement and their members. Violations of the peace obligation is sanctioned with a "fine" (compensation) and directed against both the organization (the party to the agreement) and the individual member violating the peace obligation. It is a consequence of the peace obligation in combination with the highly centralised bargaining system that local parties – both outside and inside the plant – are bound by the peace obligation in local negotiations. This is also the case when the local parties are negotiating on matters not regulated at all or not in a sufficiently way in the central collective agreement. This aspect of the peace obligation is of vital importance to the employers since it gives them a widespread legal protection against local conflicts. The employees have, however, a right to take action if their health (among others) are threatened in a serious and dangerous way.

All kind of local conflicts are practically speaking disputes over rights. It is a central goal of the legal system to handle these conflicts in an effective way. The overriding principle is that a local conflict should be solved at the lowest possible level. The first level is conciliation at plan level, the second level is conciliation at organisational level and the third level is a decision from the Labour Court or a industrial arbitration tribunal. The organizations are legitimated to decide over the dispute on all levels and a decision is legally binding on the local parties. Formally, the organizations are in a very strong position vis-a-vis the individual member in the conflict. This is not only the case on the employee side but is also the case on the employer side.

III Extra-judicial means for the solution of labour conflicts

1 The role of the state and the social actors

The Danish system of collective bargaining is based on two general and interlinked principles: consensus and autonomy. The organizations' relationships are based on a cooperative spirit on all levels, including the workplace level. Furthermore, the organizations on both sides consider autonomy as a necessary element in the collective bargaining system and the Parliament is respecting this common view.

As a consequence of these principles, the Parliament has passed very little legislation in the collective labour law area. The legislation is mainly of an procedural character establishing and regulating the functioning of two important institutions: The Conciliation Board and the Industrial Court. The primary goal is undoubtedly to promote peace in the labour market by promoting strong institutions to support the organization's own effort to handle conflicts. It is a common view that collective conflicts should be handled by the organizations, not by public authorities.

The pressure on the organizations to handle and solve conflicts involving their members is very strong. The Industrial Court has in a number of fresh decisions stressed this general expectation to the organizations.

The expectations are not only of a conventional and political nature, but is also expressed in a very strict legal manner. The organizations are under a mutual and extensive legally obligation to oppose members breaches of the collective agreement.

This legal obligation is of special importance when employees act contradictory to the peace obligation (illegal collective actions). The organization which is party to the collective agreement is in this situation legally obliged to inform the employees involved about the peace obligation and if necessary order them back to work. If the organization fails to comply with the obligations in this respect it can be sanctioned with a "fine" (compensation).

The legal obligation is, however, also of importance on the employers side. The organization has to guide the employer in the reading of the collective agreement, including the understanding of the general obligations resting on the employer. The employer organization is not in general obliged – nor entitled – to order the individual employer to handle for instance a restructuring of the business in a specific way. This is only the case to the extent that the employer is acting in a way contradictory to the rules laid down in the collective agreement, e.g. by not respecting the duty to inform and discuss such matters with the employees.

2 Extra-judicial means for the solution of labour conflicts: general overview

A Typology

Conciliation as well as arbitration plays a major role in solving conflicts on the Danish labour market. It forms a central part of the organizations legal obligations in the collective bargaining system. This is the case within both the public and the private sector of the labour market.

Both conciliation and arbitration is partly based on legislation, partly on collective agreements. There doesn't seem to be a strict typology in this area. It is a common feature that both conciliation and arbitration is of a obligatory nature.

The Act on Conciliation in Industrial Disputes uses the terms "Conciliation Board" ("Statens Forligsinstitution") about the authority as such and "conciliators" ("forligsmænd") about the appointed three leading persons involved in the Conciliation Board and "assistant mediators" ("mæglingsmænd") about the 21 persons appointed in order to assist the conciliators. This Act authorises only conciliation, not arbitration.

The conciliation is of a public nature since the Conciliation Board is a part of the state administration and the conciliators are appointed by the minister of employment. The main organizations – and especially DA and LO – have , however, a central position in all questions relating to the act. This also – at least in practice – includes the crucial question about appointment of specific persons as conciliators. It is not realistic that a person will be appointed if either DA or LO is opposed to the candidate. Seen from a political viewpoint this far reaching influence underlines the organizational responsibility for the handling of industrial disputes including the functioning of the conciliation machinery within the walls of the Conciliation Board.

The Act on the Industrial Court uses the terms "joint meeting" ("fællesmøde") and "conciliation meeting" ("mæglingsmøde") for the conciliation activity in disputes over rights. A key aspect of this conciliation is that it is carried out in a "joint committee" with representatives from both the employer and the employee organization (the parties to the central collective agreement). The Act furthermore authorises arbitration for a judicial decision if the organizations themselves do not solve the disagreement. This is dealt with by an "industrial arbitration court" ("faglig voldgift").

These act-based measures are supplemented by different kinds of similar measures regulated in the basic agreements or the traditional collective agreements. One example is the "dismissals boards" ("afskedigelsesnævn") handling cases about the fairness of dismissals – individual as well as collective – according to the general standards laid down in typically basic agreements.

Another example is the "cooperation board" handling cases about breach of the cooperation agreement between DA and LO laying down an obligation on the employer to manage in a cooperative way including an obligation to set up "works councils" at the plant with a mutual representation from each side. One of the important tasks for the works councils is cooperation about restructuring of business.

It is possible for either the one side (typically the employee side) or the two sides in agreement to ask for support from special "cooperation consultants". The consultants are appointed by DA and LO (one from each side) and are a part of the secretariat of the "cooperation board". Contrary to the traditional use of "conciliation committee" , the consultants are not authorised to settle the conflict on their own. They are only mediators. This is undoubtedly due to the fact that issues relating to the managerial prerogatives are of a very sensitive nature. It is in principle a matter for the management in cooperation with the employees in the work council with out any interferences from neither the unions nor the employers' organizations.

Disputes related to the managerial prerogatives can, however, to some extent be seen as disputes over rights. This is for instance the case if the union claims that a specific measure constitutes a misuse of the managerial prerogatives.

B Financing

The conciliation by the organizations is financed by the organizations themselves. This is also the case with the judicial decision in an industrial arbitration tribunal. The economic burden is an integral part of the concept of autonomy and is one element among others designed to promote responsibility and effectiveness in the organizational handling of conflicts.

The "Conciliation Board" is in principle a public authority and all costs of salaries, office staff etc. are financed by the State through allocations in the annual finance laws or by a special act. This must be seen on the background that the Conciliation Board's primary function is to promote the societal interest in peace in the labour market.

3 Conciliation and mediation in collective labour conflicts

A Notion and character

Conciliation is in general of a obligatory nature. This is the case with conciliation related to disputes over interest as well as disputes over rights. There are, however, profound differences between the two kinds of conciliatory machinery.

It is a vital element in collective bargaining system that the organizations are mutually obliged to solve disputes over rights through a machinery of conciliation and arbitration. A main feature in this conciliation machinery is accordingly that the conciliation is carried out of a "joint committee" consisting of representatives from each side of the organizations. The conciliation is of a civil law character since it is up to the parties (organizations) to decide whether and how the conciliation should be carried out in the concrete case. It is, however, an invariable precondition for referring a case about the legality of a work stoppage (unless terminated) to the Industrial Court that there have been held a joint meeting under the participation of the organizations.

The conciliation in disputes over interests is also of a mandatory character but it differs in at least three ways from the traditional conciliation. First of all the conciliatory machinery is of a public law nature. The conciliator is appointed by the Government, independent of organizational interests and authorized on his own initiative to call on the parties for negotiations. Infringement of the conciliators call for negotiation can be punished by a fine or imprisonment of up to three months. Furthermore, the conciliation is done by a single person, not by a joint committee. Finally, the Public Conciliator is (formally) not authorised to settle the dispute between the conflicting parties. If the parties want to take industrial action, this will not be prevented by the conciliator.

B Where it is to be applied

As a starting point, all kinds of disagreement between local parties (the employer and the employees) of an industrial character (disputes relating to establishing new as a well as interpreting existing collective agreements) should de dealt with by the conciliatory machinery. It is a rather complex system with three fundamentally different ways of solving a conflict in the end: disputes over interpretation of collective agreements, disputes over breach of the collective agreement and disputes over interest (establishing and renewal of collective agreements).

Local disputes over the interpretation of collective agreements are in all cases to be handled by conciliation by the organizations (the parties to the collective agreement in force) in a two-level model: The so-called "conciliations-meeting" at the plant ("mæglingsmøde") and (if necessary) the following so-called "organizations-meeting" ("organisationsmøde") at the office of one of the organizations involved.

If the local dispute is over a breach of the collective agreement, e.g. an illegal action in contradiction with the peace obligation, the parties is obliged to participate in a "joint meeting" ("fællesmøde") under the participation of the main organisations, e.g. DA and LO. If not solved at this meeting, the case can be brought before the Industrial Court (or an industrial arbitration tribunal if so agreed upon by the parties to the collective agreement).

Disputes over interest of a local character should to begin with be handled in the same way as disputes over interpretation of collective agreements (if the parties are bound by a collective agreement), e.g. by a "conciliations-meeting" and a "organizations-meeting" if necessary. If the dispute isn't solved by one of these meetings the parties are, however, free to take industrial action afterwards. The conflict can not be solved by an industrial arbitration tribunal unless the parties agree upon this solution which rarely happens.

It has to be underlined that local disputes over interest are very rare in practice due to fact that almost every conflict is related to an existing collective agreement. An example of a local dispute over interest is the situation where some new and extraordinary work functions fall outside the scope of an existing collective agreement and therefore have to be considered not-regulated. This situation occurs very seldom in practice due to the fact that a collective agreement it supposed to handle all questions about work conditions between the parties during the validity of the collective agreement (typically from 2 up to 4 years).

In disputes over interests between organizations and conflicts between an union and a single employer with out collective agreement the parties are in principle free to take industrial action in compliance with the (formal) guidelines in the basic agreements. The Conciliation Board is, however, authorized to call on the parties to negotiate.

C Procedure

The procedure is not formalised in any distinct way. Both legislation and collective agreements says only little about the procedure to be followed in connection with conciliation.

In disputes over rights one party has to request the other party to the collective agreement for a "conciliation meeting". In practice it is often the shop steward on the plant who asks his organization for help to solve a dispute with the management. It is, however, solely up to the organization to request a meeting with the employer organization.

The meeting is in formality a meeting between the organizations on the two sides (the parties to the collective agreement), and the organizational representatives are authorised to settle the dispute with binding effect upon the local parties. In practice, however, the organizational representatives very often functions as a kind of mediators trying to promote a mutual understanding between the local parties. This is especially the case if the dispute is of a pure local character not contradictory to specific organizational interests.

The general intension with the conciliation procedure is to promote quick settlements. The parties are therefore under a duty to participate in meeting with short notice. This is especially the case in disputes of emergency.

A special category of cases – illegal work stoppages – is handled in a very quick way. According to the Act on the Industrial Court a joint meeting with participation by the organizations to discuss the stoppage shall be held the day after its commencement, unless the stoppage has terminated before the holding of the joint meeting. The organizations are legally obliged to demand the employees back to work. If the employees are back in work immediately after the holding of the meeting (in practice the beginning of the normal worktime the day after the holding of the meeting) they will as a starting point not be sanctioned with a "fine" (compensation) for the work stoppage.

In disputes over interests the conciliation is primarily done by the Conciliation Board in accordance with the rules laid down in the Act on Conciliation in Industrial Disputes. This conciliation machinery is regulated in a more detailed way due to the sensitive character of the work carried out by the public conciliator.

The conciliator is authorised to call on the parties in a dispute of interest if the parties own negotiations from one of the sides are declared concluded and there is reason to fear a stoppage of work, or one has already occurred and the conciliator attaches social importance to the effects and scale of the dispute. In practice, however, the parties themselves usually make a contact to the conciliator for assistance for the renewal of collective agreements. In this latter case it isn't, of course, a precondition that the negotiations are declared concluded. The contact to the conciliator is a part of the negotiations, typically laid down in the schedule for the running of the negotiations.

When a conciliator has decided to mediate or he is already mediating he may call on the parties to postpone a stoppage or a threatening stoppage. This delay of an industrial action may cover a period of up to two weeks. If a stoppage will affect vital social functions or likely have otherwise far-reaching social consequence, the conciliator is entitled to call for an extra postponement for up to two weeks. The parties are entitled to initiate the postponed stoppage 5 days after the expiry of the two weeks period or a time before if the conciliator has declared the negotiations definitively closed.

The conciliator is empowered to promote a solution to the conflict in the form of a "conciliation proposal" ("mæglingsforslag"). The parties (organizations) are obliged to submit the proposal to a voting either by ballot or by a qualified assembly. A simple majority against the proposal is in principle enough to reject it. If the voting takes place in form of a ballot – as usually is the case on the employee side - and there was under a 40% poll, it is, however, furthermore requested to reject a proposal that the no-voters make up at least 25% of the entitled to vote. The aim of this rule is to protect the conciliators proposal against small – but active – militant groups of union members.

The conciliator is empowered to decide that different conciliation proposals shall be considered as an entity. The aim of this rule is to secure a general solution on the labour market. The parties involved will either all have renewed their collective agreements or no solution to the conflicts. Applying of this rule – which is normal procedure for proposals on the dominating private area between organizations belonging to DA and LO – makes it very difficult to reject a conciliation proposal. It gives the public conciliator a very important function in the collective bargaining process.

The conciliator is entitled to make a conciliation proposal in any circumstances he finds it expedient. It is, however, a long standing practice that the conciliator doesn't submit a proposal if one or both of the parties are opposed to it.

Any disagreement with regard to the competence of the Conciliation Board may be referred for settlement to the Industrial Court. Such cases are very rare.

4 Arbitration

A Notion and character

Arbitration is part of the solving of conflicts in the collective bargaining system. It has an obligatory character with in certain kinds of disputes.

B Where it is applied

As mentioned above disputes over rights can be distinguished in two categories: The one about mainly breaches of collective agreements, the other about interpretation of collective agreements. It is a common feature that the organizations are under a duty to make conciliation although in a slight different way in the two categories. The final solution – if conciliation fails to find a peaceful solution – is quite distinct.

If a dispute over interpretation of a collective agreement in a broad sense isn't solved by a "conciliation-meeting" or a "organizational meeting" each of the parties to the collective agreement (the organizations) is entitled to refer the dispute to an "industrial arbitration tribunal". This is a mandatory mean excluding the Industrial Court as well as the ordinary courts. The arbitration tribunal is making a judicial decision – typically a decision made up solely by the neutral judge functioning as chairman besides the four organizational representatives (two from each side).

If the dispute is over a breach of the collective agreement the starting point is that the case have to be referred to the Industrial Court. It is, however, possible for the parties to the collective agreement to agree upon the use of an industrial arbitration tribunal instead of the Industrial Court. This is usually done in the public sector, but rarely in the private sector.

Arbitration is not a part of the Act on Conciliation in Industrial Disputes. Disputes over interest is as a general rule to be solved by negotiations and industrial action, not by judicial or administrative decision-making. The parties themselves are, however, free to agree upon a system of arbitration as an alternative to industrial conflict. This is only done in a very few instances, first of all in the collective agreements between the Christian employers' and employees' organizations.

C Procedure

The procedure is only little formalised compared to the procedure followed by the Labour Court and ordinary courts. This is typically an element that seen from an organizational perspective is an advantage compared to the traditional court-rulings.

The Act on the Industrial Court says very little about the procedure at the industrial arbitration tribunals. In many collective agreements there are laid down some rules on the procedure, e.g. timelimits etc.

D Judgement

An industrial arbitration tribunal is making binding judicial decisions. The decision can't be referred to the Industrial Court or the ordinary courts.

IV Assessment of extra-judicial means for the solution of labour conflicts

1 Practical assessment: some statistical indicators

I have not at the moment sufficiently information of a statistical character but will try to collect further information.

2 Critical assessment (problems of implementation and development)

The primary problem – seen from the perspective handled in this report - lays in the different mechanisms to solve conflicts inside and outside the scope of the collective bargaining system.

The machinery of conciliation and arbitration is an integral part of the collective bargaining system designed to promote peaceful solving of conflicts. The system operates in overall indeed in a very effective way securing a low level of industrial conflicts on the Danish labour market.

Outside the scope of the collective bargaining system – that means employers not covered by a collective agreement – there isn't any formal machinery of conciliation and arbitration. The organizations offers to some degree conciliation activity on a more conventional basis due to the fact that employers as well as employees often are members of organizations although the employment relationships are not covered by a collective agreement. It is for instance usual that professionals are member of an organization and employed by an employer being member of the relevant employer organization. The employers' organizations on the private labour market are to some extent opposed to establishing collective agreements covering professionals. They are, however, typically not opposed to the idea of solving a concrete dispute between the local parties by conciliatory means.

V Extra-judicial means for the solution of labour conflicts across the community

Implementation of community directives are in Denmark mainly done by a combination of legislation and collective agreements. Both The Danish Parliament and the main organizations consider it to be of vital importance for the survival of "the Danish model" that community directives are implemented through collective agreements as far as possible. This means that special annexes to the collective agreements usually contains rules implementing specific directives.

If a directive is incorporated in to a collective agreement it's rules forms a part of the agreement. This means that disputes over the rules based on the directive have to be handled in the same way as other disputes, e.g. by conciliation and arbitration. This has for instance been the case in several disputes over equal payment for men and women. Both the "Industrial Court" and the "industrial arbitration court" is by the European Court of Justice considered to be a Court in the meaning of the community legislation.

As mentioned above the conciliatory and arbitrational system is an integral part of the collective bargaining system. Outside the scope of this system – employers without a collective agreements – there isn't a similar system of handling of disputes. This means that solving conflicts in principle is up to the individuals by referring cases to the ordinary courts or special administrative bodies. This is also the case with legislation based on community directives.

The organizations are, however, without any doubt solving a notably part of the disputes on a conventional basis. This is undoubtedly also the case with disputes over community based legislation based rights.