THE SPECIALIZATION OF LABOR JURISDICTION THROUGH AUTONOMOUS BODIES IN THE LEGAL SYSTEM IN BRITAIN

Lavinia Onica-Chipea
Senior lecturer PHD., University of Oradea
laviniachipea@yahoo.com

Abstract
This paper aims to present the most important aspects which confer the labor jurisdiction in the UK the quality of specialized jurisdiction. The experience especially the results can and should be an important milestone for the Romanian legislator, in the attempt to create a specialized labor jurisdiction in the Romanian legal system too.
Keywords: quality, specialized jurisdiction, labor, legal system

1. General considerations on the specialization of labor jurisdiction through autonomous bodies

Specialized courts are modern forms of employment litigation which in recent years have gained an ever wider audience. The advantage of these jurisdictions is that they submit the dispute to some relevant factors that have specialized training recognized and can, therefore, provide maximum accuracy and efficiency that gives solutions. Specialized courts may be, in turn, of two kinds, namely: organ specialized in labor jurisdiction existing in German and English systems of law enforcement jurisdiction and that the work included in the judicial system of common law, found in systems as in France, Italy, Poland.

2. The history of labor regulations in the UK jurisdiction

The origins of legal regulations on labor jurisdiction in Britain are linked to the affirmation of union workers, the economic, social and political plan (Călinoiu, C.,1998: pp.52,53). A century ago, members of trade unions were recognized certain immunities, including damage caused as a result of economic effects of strikes and pickets during the conduct of strikes have also become legal.

The laws regarding employment in 1980 and 1982 established a balance between rights and responsibilities in industrial relations. Thus, Act 1980 empowers the government to support greater use by secret ballot elections for trade unions and provide a code of practice intended to promote good industrial relations. Also it was limited the right to install pickets from their job and was restricted to secondary action, such as sympathy strikes.

Act 1982 increased the compensation for unlawfully dismissed workers, union members or non-members and introduced compensation from government funds for certain categories of workers redundant. Also included were considered illegal clauses in certain contracts, that the operation would discriminate against members of trade unions and

workers who lacked this quality. Union position of complete immunity from any action was removed, however, matters referred retain immunity, but only actions in support of a term regarded as lawful.

Unions Law in 1984 was promoted by the government in order to strengthen the democracy among unions. Under its provisions, all voting members of the main trade union executive committees will be elected by secret ballot. It also provided legal immunity to those unions call strike or industrial action that triggers without such a procedure is approved by a majority.

3. The Dispute Settlement Mechanism

3.1. **Employment tribunals**

Called "industrial tribunals" in 1998 pending ERDRA, employment tribunals (or courts for industrial relations work in Northern Ireland) were established in 1964 in order to address employee appeals against the plans set by the Industrial Training Act (Deakin, M., Morris, G., S., 2005: p.76). In 1965 their jurisdiction was extended to cover new claims for statutory redundancy payments newly introduced. Industrial Relations Act 1971 gave courts a central role in the area of labor disputes by introducing safeguards against illegal dismissal and thus their jurisdiction was extended progressively to a wide range of employment issues. Of all actions to the courts work, occupy the largest share those involving appeals against dismissal illegal (33% of applications in 2003-2004), also a significant amount of request to these courts aim complaints about unauthorized deductions income (approximately 18% of applications in 2003-2004) (Employment Tribunals Service, 2004: p.4).

Employment tribunals jurisdiction extends also to the statutory rights can be exercised against the union in relation to discipline, exclusion or expulsion from membership. However the work jurisdiction of the courts was always excluded collective disputes, whose solution belongs to specific organs of conciliation and arbitration.

Employment tribunals have no power to mandatory. Thus, they may return to work have an employee illegally fired, although that provision is mandatory. Penalty against an employer who refuses to apply such a provision is additional compensation paid to the plaintiff. Also, employment tribunals are not competent to rule on financial issues, so if a prize has not been paid, the applicant may appeal to a tribunal complaint territorial.

Between 2003-2004 a total of 115,000 applications to the courts work, 68% have come to be resolved, either because they have been resolved by conciliation (It offers home) or by withdrawal, for example as a result of a private understanding.

The constitution and procedure followed in the courts of work are governed by ETA in 1996 and by statutory regulations. In England and Wales there are 21 employment offices of the courts but hearings may be held in temporary locations. From April 1996 the administrative support for tribunals work and EAT (Employment Appeal Tribunal) is provided by the service employment tribunals (ETS), an executive agency of the Department of Trade and Industry.

Unlike ordinary courts, employment tribunals have a tripartite structure (Leș, I., 2002, pp. 346-347). Their president is a professional lawyer (barrister or solicitor), which was described at least seven years and is appointed by the Lord Chancellor, he is assisted by two assessors appointed by the Secretary of State in matters of employment, trade unions

proposal and employers. While the President is to control the conduct of the whole procedure, assessors they can intervene and vote on which it expresses is equal to the President, in all cases. Also, when dealing with their position is independent, they do not action as representatives of their organizations.

In practice, most decisions are taken unanimously. Before 1993, presidents of courts could hear cases without the participation assessor only in limited circumstances, such as temporary problems. After 1993, Turer extended the jurisdiction of the president, including for example cases of unauthorized deductions from payments, insolvency, employer rights, etc.. Even if the settlement of cases by the president alone determines substantial savings, to relieve system using members' experience, which in many instances is significant.

Referral to employment tribunals are conducted, usually within three months from the date on which the incident occurred, although in some cases can be accepted and applications outside that period.

Employment tribunal secretary send a copy of the complaint received employer, who shall have 28 days to reply whether they intend to dismiss the complaint and if so what are the reasons invoked. Procedure, whereby the parties are actually encouraged to try to resolve their internal problems first by is borrowed from ACAS, the conciliation officers have a duty which, for most applications, seek to promote understanding between parties without the need for a court hearing.

As I mentioned, one of the cases are settled by conciliation through ACAS or withdrawal. Arrangements made under the auspices of the conciliation officer and recorded in a form suitable unable to reach a court hearing. Turer 1993 introduced a "compromise agreement" as a new mechanism to achieve reconciliation. To be effective, the applicant must have received "independent advice" on a qualified lawyer, able to assume a possible failure. ERDRA 1998 extended provisions to mean that counsel must come to a "relevant independent advisor", a category that includes well as lawyers, officers, employees or officials of independent trade union members, whose union gave written competent to give advice, or even people who work in counseling (whether employees or volunteers) that the center has certified or approved. If these people are employed, or those acting for the employer, or an employers' association may not have that quality.

Preliminary issues such as whether the tribunal has jurisdiction to hear the case, can be determined from an examination before the hearing and whether such application can be stopped at this point.

The possibility that the court in determining whether or not a party to request a deposit, and especially its value must be taken into account the means available to that party. If requested the deposit is not paid within 21 days and asked no extension of time nor granted the request and the response will be rejected.

If the complaint is upheld, the court sets a date for hearing the parties will have to present evidence.

Discussions are usually public, but the possibility exists that, for example, at the request of the Ministry, discussions take place in secret whenever necessary in the interest of national security. Also, the court itself may decide that public debate is not whether the evidence consists of information whose disclosure would cause substantial damage to the parties, in particular employer.

The president of the tribunal may give guidance on any issue that arises in connection with the proceedings, including requiring a party to give information, to require disclosure and inspection of documents, assisting witnesses and produce documents

(Deakin, M., Morris, G., S., 2005: p.80). Also, the chairman or tribunal shall seek to avoid formality in the proceedings taking place, not bound by any rule of evidence relating to the administration. Investigation, hearing persons who appear in court, that witness will be made as President considers appropriate to clarify some aspects of the case.

As I mentioned, parties to the proceedings may be represented by a person of their choice. He stands as important to flatten the differences between the representation of employees and employers in proceedings before the tribunal. In 1987, the Courts Report of Labor Justice stresses that: "If individual disputes arising in relation to employment (employment), the employee is usually in a position lower than the employer. An employer corporation will normally have a personnel department and most likely hired a lawyer with considerable experience in court proceedings. It is possible that the employer is more capable than the staff to communicate with the court office to find witnesses to produce evidence necessary. Also, if you need to deal with external legal representative employer is more capable and allow it. "

Finally, the reasons must be presented in the proceedings before the tribunal. They have shown, in general, orally and in writing but if a party so requests or if written reasons are required by the EAT. Written reasons must contain problems tribunal or chairman has identified as relevant for application, if identified problems have not been determined and why the law applicable to the case, etc.. If a party wishes to make a call to EAT, it must do so 42 days from the date on which written reasons were sent to the parties or the date on which the written record of the trial was sent to the parties.

Courts may order payment of compensation and restoration of rights of the parties (e.g the employee back into work has been dismissed without good reason). Proceedings before employment tribunals are free, so cost does not imply parties unless they are represented by lawyers.

3. 2. **Employment Appeal Tribunal**

The labor court decisions may be appealed before a tripartite parties EAT (Employment Appeal Tribunal) but only questions of law, considering the facts were finally established in the first instance (Călinoiu, C., 1998: p.54). EAT was established under the Employment Protection Act (1975), replacing the National Industrial Relations Court (Nirca) created by Industrial Relations Act of 1971.

EAT has limited original jurisdiction under EPLLCR TIGER 1999 and 2004. That court has the same powers as the High Court, on receipt and examination of witnesses, document production and analysis of problems and incidents with jurisdiction. In solving a call, EAT may determine if the problem itself and to submit the same or another employment tribunal differently constituted to decide in light of current legislation.

EAT has a location in London although it may carry on business anywhere. As I mentioned, like employment tribunals, EAT has a tripartite structure, consisting of a judge and members who are not lawyers with special knowledge or experience in industrial relations, but representatives of employers and workers. Members are appointed by the Queen on the recommendation of Secretary of State in matters of employment and chancery. A call is normally heard by a judge and two members appointed, which although it gives the legal issues may even vote against the judge. The judge may hear the case only when it is provisional issues and can normally hear the appeal only if it is the original decision was taken in the absence of members appointed tribunal president.

It appears that the number of appeals is relatively small compared with French practice. EAT decisions have force of judicial precedent although labor courts tend to grant them this value. In England and Wales, EAT decisions may form, with the latter's authority, subject to appeal before the Court of Appeal (Leș, I., 2002: p.344) or an appeal to the Lords.

3.3. **Reform employment tribunals**

Reforms of labor dispute resolution system to the English had different purposes, one of which refers to reducing the number of cases referred to the courts work, by encouraging parties to resolve disputes through alternative means.

ERDRA Act of 1998 began this process, first giving power of a home to prepare the scheme, which was to be subject to approval by the Secretary of State for employment, in order to resolve disputes through arbitration illegal dismissals. Thus, ACAS shall appoint an arbitrator from a panel of persons chosen for their practical knowledge and experience to work on work discipline and dismissal. Recourse to arbitration is voluntary but excludes recourse to an employment tribunal in this matter. Arbitration aims to answer the question whether the dismissal was lawful or unlawful, the judge can request assistance with a legal adviser appointed by ACAS, if disputed issue is related laws. The parties must cooperate fully with the referee process for the process to complete. Once the arbitration decision may be appealed to the employment tribunal, which may invalidate or how often the procedure or the decision itself are considered to have caused or will cause an injustice to the complainant (Deakin, M., Morris, G., S., 2005: p.85). Awards held in private and their decisions are confidential, although ACAS may publish general information, summary, without identifying individual cases

Employers are required by law to establish procedures for resolving labor disputes, as pre-submission stage before an employment conflict. Failure procedures for resolving conflicts at work may constitute grounds for rejecting complaints by courts seized. Failure of internal procedures may reduce by up to 50% of compensation that may be granted by an employment tribunal.

Employers are obliged to inform employees on appropriate procedures for resolving conflicts at work, these provisions constitute a necessary component of individual employment contracts or written of information that employers must provide employees within two months after birth ratios work.

Employees and their employers should make every endeavor to resolve labor disputes to be submitted to an employment tribunal. In the first instance, the parties shall attempt by informal conflict resolution through discussion between the employee and his supervisor. If conflict is not resolved in this way, then the formal procedure will be initiated to resolve the conflict.

EA 2002 establishes two types of statutory appeal procedure (GSP) that is a standard procedure applicable to most cases and procedure as applicable in limited circumstances. An appeal is defined as an employee complaint against the action expressed by the employer or the action that it plans to conduct against him. This may relate to: complaints about payment of wages, discriminatory treatment in relation to what is applied by virtue of his membership of the union, illegal dismissal, etc.

The first step of the standard GSP requires the employee to submit the complaint in writing and send the original or a copy of the employer.

The employer must invite the employee to attend a meeting, for joint discussion of the contents of the appeal (the second step of the procedure). Employees are entitled to be accompanied at these meetings by a colleague or a representative of the union. With the consent of the employer, employees may be accompanied by representatives of the Citizens Advice Bureau.

If employees are dissatisfied with the measures which were adopted by the employer to settle labor disputes, they have the right to appeal its decision through a letter presenting arguments in this position (third step). Resolution employer is following this final stage, representing the procedure required to resolve the conflict in the workplace.

Modified two-step procedure applies where the employee no longer has that status and the employer is not aware about the injustice caused to the employee before termination of employment or has experienced this but is not standard procedure was started or terminated before the last working day of his employee. Procedure that is so designed to be applied in situations where there is no employment relationship between the two sides, and they have no interest in following the standard procedure, with a common understanding on this issue. Thus, as the procedure has two steps: the first step the employee must submit a written statement or dissatisfaction and send a copy of her employer, the second step requires the employer to make answer in writing and a copy of the response be sent to the employee.

GSP where applicable, the time limit for submitting a complaint employment tribunal is three months from the day that would have expired in specified circumstances. Submitting a request under the GSP is one of the prohibited procedures in two situations, namely: the procedure did not start due to a threat or harassment against a party and that, call the procedure that would not be done without revealing information contrary to the interests of national security.

Based on those matters, concluded that the doctrine remains to consider to what extent the new procedures will be established or contrary impulses will hinder what should be the primary objective of conflict resolution work correctly.

3.4. **Government agencies with responsibilities in the field of labor relations**

Institutions about which we still speak, although government funded, it operates independently.

a. ACAS (Advisory Conciliation and Arbitration Service)

ACAS arbitration service includes counseling and conciliation and performs many functions in the area of labor relations.

State involvement in the processes of conciliation and arbitration dates from the Conciliation Act, 1896. Yet for decades, this function was fulfilled by the Government department charged with responsibility for employment issues. In 1975, on the basis of the Employment Protection Act was set up home in urgent need of creating an independent body for this area.

The service is led by a tripartite board consisting of a chairman and nine members, three of which are appointed by the TUG, three by the CBI and the three are totally separate and independent legal organization. Although ACAS is required to submit annually a report on its activities to the Secretary of State expressly gives its status of independence from ministerial direction.

Service tasks are numerous and are expressed in various forms and assumptions. An important task of his home becomes manifest in an attempt to achieve reconciliation by the parties who have submitted their dispute resolution by an employment tribunal. Conciliation process involves assisting the parties to clarify any misunderstandings and to try to reach consensus, but the terms remain in understanding liability of the parties. Thus, the Secretary of the tribunal's work sends home a copy of the application to the court, reply or any other relevant documents. In this situation, ACAS tries conciliation officer or on the initiative of a party or on its own initiative to achieve reconciliation of the parties. In general, there is a period longer or shorter it can attempt conciliation parties of 13 or 7 weeks respectively. Parties may refuse to cooperate in the conciliation process, although their service is free and for talks with the conciliation officer are confidential.

Benefits of resolving conflict by withdrawing the conciliation stage are undeniable for both system itself, such as reducing the costs of process and especially for parties, confidentiality, ability to determine terms of understanding themselves, etc.

Another important task of the institution relate to conciliation in collective disputes. In this regard, ACAS facilitates union disputes by conciliation or at the request of the parties, either on its own initiative. The procedure is conducted in such a situation is voluntary, meaning that allows parties to withdraw at any stage of its deployment. Before offering their services at home you need to consider the desirability of encouraging parties to use means available for negotiation or understanding of the problems are inconsistent. Based on the finding that a relatively large percentage of all complaints resulted in conciliation agreement, the doctrine (Deakin, M., Morris, G., S., 2005: p.94) makes a suggestive comparison between the success rates of collective conciliation and reconciliation of the individual concerned. Thus, if the collective conciliation, the parties realize that competition is more expensive alternative, the reconciliation of individual based on whether they have to get over conciliation and to seek redress before a court.

Where conciliation procedure that has been exhausted and failed or did not seem to succeed, ACAS may appoint a mediator, independent expert to try to resolve the dispute. However, this can be done at the request of one or more parties and they all must agree to it. Conciliation differs from mediation in that a mediator may make recommendations to the parties himself, although the parties remain responsible to resolve details of any agreement. Parties reach agreement after mediation is not binding unless the parties have expressly indicated their plans.

Arbitration may be conducted by a person called home, regardless of service or arbitrary by the Central Committee (CAC). The parties agreed deadline for arbitration and the arbitrator's terms of reference. Deployment cost is borne by the ACAS procedure, but the parties shall pay their own costs themselves, and the losing party may be ordered to pay payment. For this reason, legal representation is rare and normally it requires the consent of the arbitrator. The decision may be published if so decides ACAS and the parties agree to it.

Another ACAS's task is to provide counseling and information services. In this regard, ACAS provides advice on issues of industrial relations between employers and their associations, workers and unions, even by telephone or personal visits. If at a time until all services offered in this regard by ACAS were free to charge different fees for this institution exercising its statutory functions. Under its statutory powers, ACAS can perform research on any question relating to industrial relations in general or in particular.

Also, ACAS is empowered to formulate codes of good practice, to promote and improve industrial relations, which will be submitted to the Secretary of State and

Parliament. ACAS has a responsibility to appoint independent experts, which are meant to report any complaints about violations of the principle of equal pay for equal work, the employment tribunal application.

b. Central Arbitration Committee (CAC) was established by the Employment Protection

Act 1975, as an independent arbitration body in industrial relations. It is a direct descendant of Industrial Court (Industrial Court), created in 1989.

The CAC is composed of a chairman, deputy chairman and other members appointed by the Secretary of State, all persons with experience in industrial relations, some with experience as representatives of employers and others as representatives of workers. Its chairman is currently president of the court. However, for recognition or non-recognition procedures of the CAC is required to form only a tripartite panel, headed by its chairman or a deputy and a member whose experience is as a representative of employers and one member whose experience is as representative of workers.

Together as a voluntary arbitration body, the CAC has jurisdiction to hear and complaints arising from failure by employers of the obligation to disclose information on the procedure of collective bargaining. Thus, in all areas of its jurisdiction, the CAC seeks to adopt a flexible approach in solving problems. Decisions are taken by majority and that majority unless the panel chairman.

Parties may appoint representatives, but there is no requirement to use lawyers.

c. The certificate officer is an independent officer with a statutory responsability, performing a wide range of functions related to the trade unions and the employers' associations. He is nominated by the State Secretary after an ACAS consulting. Within its functions the maintaining of the lists with the trade unions and the employers' associations, ensuring that they agree to the fullfilling of the duties they are given; the solving of the claims reffering to the trade unions elections, insuring the surveilance of the procedeengs reffering to the trade unions political funds and supervising their functioning. In 1993 the officer was granted controversed powers of investigation of the trade unions financial business.

The proceeding in front of the certificate officer is relatively simple, the officer investigating himself the inquiries he considers appropriate for the case, giving the claimant and the trade union the opportunity to present the case at the hearing. The certificate officer pays the expenses of the claimant and of the witness for assisting to the hearings, if they do not pay the legal costs. If the officer sustains an application, he must give a statement and if this is considered improper an "order of inforcement" will be given, which will request the unions to take the specific steps in order to correct the declared failure or to refrain from specific acts in future. The orders of inforcement can be consolidated as if they were the court's orders, making the trade union able to contemplate the event without expressing its consent. Each can appeal against the certificate officer's decision to EAT.

d. The Commission for equal opportunities (EOC), The Commission for rasial equality (CRE), The Commission for the rights of the disabelled persons (DRC) have the competence to eliminate the discrimination and to promote equal opportunities in their jurisdictions. These commissions have been created through Sex Discrimination Act (1975), Race relations Act (1976) and Disability Rights Commission Act (1999) and each consists of 15 members appointed by the State Secretary.

The decisions emitted by the institutions mentioned above are equally submitted to the judiciary control, a fact which generated considerable constraints on their activities.

4.Conclusions

Labor Jurisdiction English law system is so specialized jurisdiction, individual conflict resolution work being carried out by independent bodies that employment tribunals competent in first instance and Court of Appeals for the employment (Employment Appeal Tribunal), which resolves appeals but only for matters of law, declared against the decisions of the tribunal.

Specialized courts have a tripartite structure is composed of a professional a lawyer (barrister or solicitor), which was described at least seven years, as chairman of the tribunal and that a professional judge, if the Court of Appeal for employment issues and judges, representatives of employers and workers. We believe that emphasis should be here given assessor deliberative role as participants in labor disputes to courts, a role which it must be established and legal assistance to participate in panels that address labor cases, the Romanian legal system. We agree with the doctrinal opinion (Ţiclea, Al., 2007: p.962; Ştefănescu, I.,T., 2007: p. 732) which considers that the Romanian majority vote of those participating in advisory dispute resolution procedure is insufficient and unjustified work and examples of comparative law joins these arguments.

One of the most important reforms of the system for resolving labor disputes in the UK in mind, as I said reducing the number of cases referred to the courts work, by encouraging parties to resolve disputes through alternative means. Mentioned laws establish both informal procedures established by the parties of employment, the employer generally hilly and official procedures, even with the participation of government institutions, and Advisory Conciliation and Arbitration Service. The important role given amicable settlement of disagreements arose between the parties employment relationship is considered a milestone for Romanian legislature, which will need to consider the approach begun but unfinished work of specialized jurisdiction, including experiences of comparative law.

References:

1. Călinoiu, C. (1998). Jurisdicţia muncii în dreptul comparat. Aspecte teoretice şi practice. Bucureşti: Editura Lumina Lex.

2. Deakin, M., Morris, G., S. (2005). Labour Law. Fourth edition. Portland: Hart Publishing c/o International Specialized Book Services.

3. Employment Tribunals Service (2004). Annual Report and Accounts 2003-2004, HC 714.

4. Leslie, D. (1992). L., Labor Law, 3, West Publishing Co.

5. Leş, I. (2002). Sisteme judiciare comparate. Bucureşti: Editura All Beck.

6. Ştefănescu, I., T. (2007). Tratat de dreptul muncii. Bucureşti: Editura Wolters Kluwer.

7. Ţiclea, Al. (2007). Tratat de dreptul muncii. Bucureşti: Editura Universul Juridic.