

# The Roots – the History of Nordic Labour Law

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The term “*the Nordic model*” has been widely used by international labour lawyers to indicate special features which characterise Scandinavian labour law. This article outlines the history of the Nordic model, thereby demonstrating the reasons for using the term Nordic Model to indicate common Scandinavian trends in this particular field of law.

## 1 Scandinavian Societies and Law-Tradition

Traditionally, the Scandinavian countries have close mutual ties, which is owing to their common cultural and linguistic background. To a large degree their social development have followed identical paths too. Thus Scandinavia today forms a common area of language and culture and the various functions of societies are based on a common tradition.

This applies to development of Scandinavian law and jurisprudence too. Thus the Scandinavian countries form their own family within the families of law: the Nordic law family. Historically speaking, this family is based on old Germanic law with minor local variations. In the Twelfth Century the body of laws was written down in local laws and city laws. Later on these particular laws were replaced by laws covering broader geographical regions. In the Fourteenth Century Sweden got a national code of laws for the rural parts of the Kingdom and a code for the boroughs. In 1734 a code was made (*Sveriges rikes lag*) which even applied to Finland (which was part of the Kingdom of Sweden until 1809). Denmark got *Danske Lov* of 1683 and Norway (under the Danish Kings) got *Norske Lov* 1687.

This does not mean that the law of continental Europe had no impact. Indeed, over the years many contacts were made. In particular Sweden’s involvement in European power policy at the time of the Thirty Years’ War created links with legal thought in continental Europe which were never broken. During the Napoleonic period, however, the national and liberal ideas of the French Revolution strengthened in Scandinavia the sense of cultural and linguistic separateness and helped to increase citizens’ participation in affairs of state. Stimulated, moreover, by their growing sense of a common historical and cultural heritage and an increase in mutual trade and improvement of traffic, formal co-operation within the field of legislation was formed in the last third of the Nineteenth Century.

Positive political decisions were taken in the Parliaments to promote this development. For example much legislation was based on initiatives formed by common Scandinavian committees - thereby also improving the quality of legislation since it made it possible to draw on the consolidated experience of all the (small) Nordic countries. Moreover, academics, judges, lawyers etc. from all the Scandinavian countries met (and still meet) regularly to discuss matters of interest. This adds to the law-tradition common to the Scandinavian countries, which has existed since ancient time. As an example of this tradition could be mentioned the law on non-profit-making associations: here no specific legislation applies in Denmark, Norway, Sweden and Iceland. Nevertheless, the

substantial rules in these countries within this field are almost one hundred percent identical.

The Nordic trend towards unity of law based on common Nordic experience has not been broken until recently due to impact of EC/EU, where unification efforts have taken a broader European direction (see below 6).

Labour law is closely related to social development within society as such and to welfare legislation. Moreover, no formal attempts to unify the Nordic labour law and social security systems were ever made as part of the Nordic unification efforts. So the developments within this field of law reflect the specific situation of each individual country to a considerable degree.

However, basic legal thinking and basic features of law (*i.a.* Law on Contracts) which form the roots even of labour law are identical. Moreover inspiration between labour lawyers easily crossed the borders. Thus Danish, Finnish, Norwegian and Swedish jurisprudence within labour law was mutually utilised and in case law inspiration was found in other Scandinavian countries. The well known Swedish scholar Folke Schmidt for example took inspiration from the body of knowledge extracted from Danish case law within the collective field by the Danish scholar professor Knud Illum and published in his book *Den kollektive Arbejdsret* (Collective Labour Law). And Schmidt's - and the Norwegian judge Paal Berg's writings inspired the present author when he completed his comprehensive work on Danish labour law. So no wonder that within labour law important identical trends have prevailed. This even enabled *Nordisk Råd* (The Nordic Council) to edit a textbook which presents the labour law systems of the involved countries within the framework of a overarching systematism (*Arbetsrätten i Norden*, Nord 1990:42)

In contrast, up till recently influence from other European countries on the Scandinavian labour law systems has been more sporadic. The English union movement as such was paradigm for the Danish unions. In some instances also German law has been a source of inspiration - especially on systematics. A certain influence of this kind can be found in Paal Berg's book: *Arbetsrett* (Labour Law) from the 1930s, and in the Danish author Hjalmar B. Elmquist's book on collective agreement (*Den kollektive arbejdsoverenskomst*) from 1918. And in Finland Hugo Sinzheimer's ideas in his draft for a German Collective Agreements Act (which was never enacted in his homeland) was enacted in 1924 as an attempt to form a collective system. Also early rules on labour environment and social security inspiration were inspired by German and English law in particular. In general however, it is characteristic that the influence from other European countries was normally rather limited.

So as a whole it could be said that until the middle of the Twentieth Century Nordic labour law was characterised by slow but steady development based on independence and autonomy of the collective parties involved but with due consideration to the requirements of society. Only Finland deviates from this picture due to its difficult modern history. Thus the labour law systems reflected the evolution in the Nordic societies as a whole. This means that it had independence and an identity of its own within the framework of a common Scandinavian pattern.

## 2 Relics of Feudalism and Rise of the Individual Contract

The legal conception of the relationship between employer and employee changed gradually in the Nordic countries until modern times. Thus an old system of strict regulations of the employer/employee relationship with roots among other things in the ancient guild system faded away during of the Nineteenth Century under the impact of economic development and new liberal ideas.

In the old days this field of law was characterised by strict public control with manpower, employer's disciplinary power and a social security based especially on the employer/employee relationship, in the extreme the fact that the employee lived in the employer's house. Little by little, however, the contractual element of law became a more dominant factor. On the other hand, this meant that in the field of skilled and unskilled workers the social security level in the employment relationship went to point zero.

The legal basis of this relationship followed the different groups within society: In a central position were Statutes and Ordinances on the relationship between agricultural and domestic workers and on the craft trade (apprenticeship and the guild system). But there were factory Ordinances, mine Ordinances and other statutes given for different groups of trades too. Special statutes applied to seafarers. Regulations on public servants played an additional but minor role.

Agricultural and domestic workers were regulated by Statutes and Ordinances (Orders - *forordninger*) prescribing *i.a.* duration of the employment relationship, employers responsibility to attend to the employee in case of illness etc. This was expressed in the Swedish/Finnish Code of 1734. In Denmark and Norway identical rules were put up in Statute of the Danes (*Danske Lov*) and Statute of the Norwegians (*Norske Lov*) respectively.

The crafts trades were subjected to special legal regulations and guild statutes of the individual trades based upon the need to regulate access to exercising the trade. These prescriptions laid down rather rigid rules. It was not allowed just to set up as a master of a trade - *i.a.* special training and a capital was required. Examples of such were the Swedish Ordinance of the Guilds of 1720 and the Danish/Norwegian Ordinances (*forordninger*) of 1682.

A key element in all these regulations was their rigid and compulsory character: Freedom to chose employment according to your own discretion was limited and the terms of employment was subjected to compulsory rules which could not be deviated from in accordance with the wishes of the parties involved. The duration of the employment relationship was fixed to a legal minimum. In addition, the unemployed were forced to find work - if not they could be penalised for vagrancy and drafted for forced labour. Practical problems also made it difficult to change to another job either - working hours were long. The legal systems added to these difficulties. For instance, the employee might be under legal obligation to keep his personal clothes within the employer's estate. In some cases, the employer was even entitled to go and bring back an employee who left his job without regarding the rules.

So an employment relationship of those days did not carry the characteristics of employment of today. Often this relationship was closer to the relationship of

family subordination based on status. Even as for wages and working hours, little room was left for individual decision and agreement: Custom and practice and the employers' possibility to decide this amongst themselves played a major role since the employees were not allowed to associate on such matters. Consequently, working hours were long and wages were low.

Not all employment relationships were covered by Statutes and Ordinances and individual employment-contracts were used in jobs where no special legislation applied. So there were indeed examples of what could be called free contracts on labour even in old times: In Sweden, agriculture used temporary workers and small industries used helphands on a purely contractual basis. In such cases, it was up to the parties to decide the terms of employment. But such employment did not prevail. Moreover, the substantial rules of the existing statutes - to some extent even by legal analogy applied by the courts - spread to cover employees which were not subjected to special regulations.

From the beginning of the Nineteenth Century, tendencies to liberalise labour conditions grew. Due to the upcoming liberal ideas, old restrictions on the right to exercise a trade were abolished one by one. Everybody was entitled to carry on any business (such as commerce, manufacture or handicraft) he liked (basic legislation on this was issued in Norway 1839, Denmark 1862, Sweden 1864 and Finland 1868). Moreover, forced labour came to an end. Indeed, old regulations on agricultural and domestic servants survived for some time - in Sweden for example they were not formally repealed until 1926 and in Denmark as late as in the last decade of the Twentieth Century. However, the era of the free employment contract had begun where employer and employee were given the possibility to negotiate and agree on wages and working conditions. In Finland this was even formally materialised within a general Act of Parliament: Employment Contracts Act of 1922 (covering all employees apart from seafarers and apprentices due to their special working conditions).

As will be shown below this led to a wholly new situation: the era of the collective agreements. However, even if collective negotiations now became the very core of the labour market, one must not forget that there was a considerable inertia in the way of thinking. Therefore, in spite of the formal liberalisation some features from the ancient system survived. In Finland mercantilism inherited from the Swedish era and supplemented with Russian bureaucratism created inertia in the legal system. And in Denmark structures from the old statutes on domestic servants and agricultural workers and on apprentices have survived as part of modern legislation.

### **3 The Collective Dimension**

Due to liberalisation of the labour market and rise of collectivism only a moderate protective legislation was put up on employees within the growing field of blue and white collar workers (including the craft trade). And no statutory protection for workers on employment conditions such as wages and working hours existed. On the contrary: when the trade legislation was abolished everything was left in the open - the disappearance of the old guild system left a vacuum.

In theory, employer and employee had equal possibilities to demand the conditions of employment they wanted. In reality, however, the employer took the decision, since he was far the most powerful. This situation was of course unsatisfactory and it was natural for the employee side to try to improve their position by bargaining the terms on a collective basis.

The first precondition of settling terms of employment in this way is that these terms are not already fixed by legislation. The next precondition is that the parties involved have the right to organise and that their organisations have the right to negotiate and to launch strikes (and lockouts).

In this respect, development in all the Nordic countries passed through different phases: Originally, the State was hostile to the very idea of unionisation and negotiating terms of employment on a collective basis. However, slowly this attitude changed: organisations were tolerated and eventually even supported by legislation. This led to a high level of unionisation within unions dominated by the Social Democratic Parties.

### **3.1 Denmark**

Denmark had even a formal ban on formation of organisations outside the traditional guild system. Mere gatherings of journeymen were prohibited too. Nevertheless, some organisations were formed with the purpose of rendering mutual help in case of disease and death. And there are examples of employees launching strikes in order to press employers to increase wages (1733 and 1794).

In the Nineteenth Century, a formal ban on strikes was in force (*Forordning 21/3 1800*). But from the middle of the century, this ban was not enforced any more in practice. At the same time (1849), Denmark had a new, democratic Constitution. According to this it was allowed to form private organisations.

As a consequence, several trade unions saw the light of day. Originally, they had a purely local basis. However, local trade unions soon associated on a national-wide level, too, forming federations of trade unions. A similar development took place on the employer-side ending up in a national main organisation the Danish Employers' Confederation (*Dansk Arbejdsgiverforening, DA*) encompassing crafts, industry and trade. And in 1896 a confederation of most of the national unions followed: the Danish Confederation of Trade Unions (1898 - now called *Landsorganisationen i Danmark, LO*).

From the start, hostility prevailed between the organisations on both sides. Their ambition was to crush each other, thereby gaining superiority. In the spring of 1899, a conflict broke out, which after a while grew to very serious proportions. And the employer-side refused to call the conflict off unless the employers got a recognition of some essential demands concerning labour conditions in general and the relations among unions and employer-organisations in particular. The conflict ended in a compromise, the so-called *Septemberforlig* ("September-Compromise") from the 5th of September, 1899.

This agreement acknowledged many of the demands by the employer-side, but in a modified form. But employers' managerial authority were acknowledged in principle and a set of rules were given on relations between the

organisations. Thus the parties to the compromise acknowledged each other and the right to launch strikes and lockouts according to special rules on notice of conflicts etc. Moreover, a permanent arbitration court was put up to settle disagreements rising from breach of the agreement.

This basic agreement of 1899, however, was not complete. Especially, there was a lack of rules on the question of how to solve disagreements on the interpretation of collective agreements within the different branches, and how to sanction breach of ordinary collective agreements. After a new conflict in 1908, a committee was put up on the initiative of the Minister of the Interior, the so-called *August-udvalg* (“the August-Committee”). This committee was ordered to make a draft for a solution on the basis of the experience gained during the previous period.

The August-Committee recommended the establishment of a permanent arbitration court to take care of questions concerning breach of all collective agreements. An Act was put up, and the “Permanent Arbitration Court” (*Den faste Voldgiftsret*) was established as recommended (now called the Labour Court). This meant that breaches of collective agreements were now penalised with a fine (*bod*). This is a sum of money, fixed on the basis of a free estimate of court. In this connection all the circumstances of the individual case (breach of agreement) could be taken into consideration and the fine might contain compensation for damage suffered as well as a penal element. On the other hand, the fine could be fixed to a smaller amount than the damage suffered if the breach of agreement was excusable.

Furthermore, the “August-Committee” recommended some standard-rules for handling labour disputes (*Normen*). The standard-rules contained regulations on conciliation, negotiation and finally arbitration when disagreement on interpretation of the collective agreement occurred. The standard rules had no immediate validity among the parties in the various collective agreements. The idea was that it was supposed to function as a sort of model for the organisations, so that it could be put into the collective agreements by initiative of the parties here. In fact, the standard rules or rules similar to the standard rules were adopted all over the labour market.

Finally, the “August-Committee” recommended a general (public) conciliation board to be put up with the authority to conciliate in labour disputes. An Act was passed in this field too, the Official Conciliators’ Act. This meant that the state now had a possibility to interfere in negotiations which might end up in a conflict to try to make the parties agree on a solution. According to the Act, the official conciliators had the authority to make proposals for a solution to be agreed upon, and under certain conditions, to postpone an imminent conflict.

The Danish collective agreement system has functioned since then within the framework put up in 1899 and 1910, which has only sporadically been updated in legislation and new basic agreements. And even if the collective system originally only applied to blue-collar workers, its scope of validity has been extended. From the end of the 1930s even salaried employees little by little organised their own unions. Today, it even covers public-sector employees (apart from crown servants).

### 3.2 Norway

Due to the “September Compromise” and the comprehensive work of the “August Committee”, Denmark has traditionally been regarded as the first country to design a modern collective bargaining system. However, even Norway entered the stage very early. There are even reasons to believe that there was communication between the actors on the Danish and Norwegian scenes. So inspiration and ideas might have passed in both directions.

In Norway, organisations similar to the Danish ones were formed in the late nineteenth century. The (national) Confederation of Trade Unions (today *LO*) and its opponent, the Norwegian Employers’ Confederation (*Norsk Arbeidsgiverforening, NAF*, now *Næringslivets Hovedorganisation, NHO*, The Norwegian Confederation of Business and Industry), date from 1899 and 1900 respectively.

However, the approach of the parties was different from that of their Danish colleagues: in Norway the employer-side were less hostile to the idea of collectivisation and entering into collective agreements. The Norwegian Employers Confederation accepted this idea from the very start. So already in 1902 a basic agreement was entered into between the main organisations, stating that any disagreement between employers and employees should be settled by mediation and possibly arbitration. As far as disputes of rights were concerned (disputes on a “collective agreement entered into”) arbitration was even compulsory on request of one of the disputing parties. The agreement was terminated shortly afterwards. Nevertheless, its ideas survived: Similar rules - and additional rules corresponding to the ones of the Danish “September Compromise” - were incorporated in the ordinary collective agreements within the different trades. And in 1935 a new national basic agreement was put up containing the full body of (still) relevant rules.

Legislation did not quite follow pace with the parties’ own efforts. However, several attempts were made in the early Twentieth Century to design a general statute on mediation and arbitration. And in 1915 an Act was passed on how to handle collective labour disputes. Basically, this statute was in line with the system already formed by the collective partners (and substituted to the same extent the already existing rules agreed upon by the collective partners themselves): it prescribed how to enter into a collective agreement, instituted a (public) Labour Court to decide upon disputes of rights and put up a set of rules on mediation in disputes of interest (*i.a.* entitling an official conciliator to postpone legal industrial actions and to put his mediation proposal to a ballot within the organisations involved).

In Norway too this system has survived even until today with only minor changes. Thus the 1915 Act was replaced in 1927 by a new one and in 1958 crown servants and other employees in the public sector were subjected to similar regulations. As in Denmark it was in the course of time extended to cover even the growing number of white collar-workers. Unionisation here increased from the 1920s an a special basic agreement was made in 1937.



### 3.3 Sweden

Development in Sweden was slightly different. Even here associations of journeymen were allowed under the guild system, but they were not allowed to act as bargaining units as to working conditions. Combining for such purposes as well as strikes were forbidden partly by express rules and partly by implications as a matter of course. However, abolition of the old system of regulation also meant an end to (most of) the formal legal obstacles to workers combining. Moreover, the State from now on adhered to the principle of non-intervention, which implied that the organisations of the labour market were at liberty to fight each other provided they did not use illegal means.

Therefore there was unionisation during the last decades of the Nineteenth Century as a reaction to what seemed to be the anarchy of economic liberalism and under strong influence of the Social Democratic Party. Early unions mostly consisted of local organisations of workers within a craft. But gradually even unskilled workers unionised and the local unions united on the national level. In 1898, the national-wide the Swedish Confederation of Trade Unions (now *LO*) – a confederation of national-wide unions within the different trades - was formed followed in 1902 by Swedish Employers' Confederation (*SAF* – since 2001 *Svenskt Näringsliv*, Confederation of Swedish Enterprise). And in the course of time, even white-collar workers unionised (ending up in the Central Organisation of Salaried Employees (*TCO*) and the Swedish Confederation of Professional Associations (*SACO*)).

However, the legal system was applied in a way which was still hostile to the growing union movement. In contrast to the liberal Danish interpretation of the formal rules, these rules were actually applied in Sweden. Not only was it difficult to launch a strike since this might easily lead to breach of the individual employment contract (their terms of notice). The existing ban on “crowd and rebellion” was also applied on union activities, in particular strikes. In 1899 even attempts to enforce anybody to participate in a strike were penalised under the Penal Code. And what is more: the employers were hostile to the very idea of unionisation - often it was even made a condition of employment that the employee did not join a union.

Consequently, the old system survived for a considerable time: employees had to put petitions to their employers to increase wages and improve other terms of employment. Only few formal collective agreements were entered into. Therefore the Swedish unions were radicalised.

Possibly due to the Danish “September-Agreement” attitudes softened a bit at the turn of the century. The employers now accepted the idea of collective bargaining - under the precondition that the employer's prerogatives and his right to hire and fire according to discretion were accepted. In the so-called “December-Compromise” of 1906 the union-side accepted these terms as part of a general collective system and the parties mutually recognised each other's existence.

However, the situation was not stable. Often employers tried to force solutions upon the local employees by threatening with a country-wide lockout. In 1909 such a lockout was actually launched. The result was in disfavour of the unions: little by little work was simply resumed on the conditions demanded by

the employers. Consequently, support to the union movement stagnated among employees. Moreover, contacts between the main organisations on each side were broken and not resumed until the 1930s.

On the legal scene, the collective agreement was developed through the common practise of the labour market organisations and independently of legislation. Therefore, uncertainty as to the status of an collective agreement prevailed for a long period. The idea that such an agreement should form a more comprehensive tool and that it should be binding upon its parties for a period of time was not accepted on the employee side from the start on. Moreover, there was no solution as to the important question of how to sanction breach of a collective agreement. Even legislators hesitated to solve these problems.

However, in 1906 an Act was passed on establishing an official conciliator to support industrial peace. This Act placed official conciliators at the disposal of disputing parties. His tools were more limited than those of his Danish and Norwegian colleagues. And by the Amendments of 1920 and 1936, such parties were enforced to meet the conciliator if he called for them.

Moreover, in 1920 an Act on a Central Arbitration Board was passed. The board was assigned the task of dealing with interpretation of collective agreements if the parties to the agreement wanted the Board to decide upon the matter. And in 1928 - by inspiration from the Norwegian legislation - two more comprehensive Acts were passed on collective agreements and on a Labour Court in spite of animosity from the unions. In these Acts (and in decisions of the Labour Court), principles were laid down, *i.a.* as to the binding character of a collective agreement, on peace obligation and the right to launch sympathetic actions, and on the duty to solve occurring disputes of rights by Court decision instead of industrial action. In case of breach of a collective agreement, punitive (non-financial) damages could be applied by the Court with a respect even to the breach of the agreement and without regard to the economic loss. In 1936 even an Act on the right to organise and to negotiate on a collective level was passed.

The pressure from legislator brought an end to the standstill between the collective partners. The main organisations now (1938) agreed upon a basic agreement (called the Saltsjöbaden Agreement after the place where it was negotiated) designed to work as a model for collective agreements within the different trades. This basic agreement laid down a uniform set of rules, *i.a.* on grievance procedures and on handling labour disputes touching upon functions essential to community. Moreover, the employers' right to terminate employments was reduced as were the possibility to involve a third party in an industrial action.

This opened up for even further agreements between the main organisations often referred to as collaboration agreements, *i.a.* on works councils (1946 and 1966), on apprentices (1944) on job security (1942). Consequently, legislator for a long time took a more passive attitude.

It should be added that similar agreements were entered into between SAF and the organisations of the white-collar workers and in the public sector.

### 3.4 Finland

Under the guild system it was illegal for journeymen and other employees to associate for the furthering of their interests. Even after the formal legal restrictions on trade union freedom had been abolished no association could be founded without government approval. However, as a result of the Russian-Japanese War (1904-05), the Russian authorities were enforced to liberalise. Among the liberalisation measures freedom of association was enacted in 1906 as a constitutional right of the citizens. A Finnish Trade Union Confederation was founded immediately after - but had a hard time due to Russian repression.

In 1919 after Finland became independent from Russia, a formal Associations Act was enacted and the 1906 Act was included in the Finnish Constitution. Moreover provisions to protect freedom of association were included in the Employment Contracts Act of 1922.

However, in contrast to the situation in the other Scandinavian Countries, Finnish trade unions were Communist dominated to a large extent and therefore often involved themselves in other activities than usual trade union business. Therefore, they were looked upon with suspicion by the employer-side as well as by the authorities. And in 1930 the Finnish Trade Union Confederation and several national unions were dissolved by court order due to subversive activities. Alongside an Act to Protect Labour Peace was passed (prescribing punishments for example for forcing an employer or and employee to join an association or to take part in a strike).

In the same year, a new Central Organisation of Finnish Trade Unions under Social Democratic auspices was founded. However, this did not change the attitude of the employers overnight. And it was not until the enormous efforts during WW II that the most important employers' organisations accepted the trade unions on an equal footing. An agreement to this effect was concluded with Finnish Employers' Confederation in 1940 when the confederations on both sides recognised each other in a declaration of principles. And regular basic agreements followed in 1944, 1946 and 1997. These agreements formed the pattern for similar agreements outside their formal coverage.

In 1945 the Act to Protect Labour Peace was repealed. And during the following years collective agreements were concluded for blue-collar workers in all major industries. Slowly collective agreements attained a broad coverage even within white-collar employees. Moreover, the subject matters of the collective agreements were broadened and they became more extensive and detailed. In addition, the main organisations concluded basic agreements on matters of more overarching interest (*i.a.* on 40-hour week in 1965, holiday pay in 1967, shop stewards in 1969 etc.).

Originally the collective agreements had no legislative basis. However, in 1924 a separate Collective Agreements Act was enacted (modernised in 1946). The 1946 Act was accompanied by a Labour Court Act, which followed the models from the other Scandinavian countries (until then collective agreement disputes were under the jurisdiction of the ordinary courts if the agreement did not contain an arbitration clause). The main principles of this Act have applied ever since (even if the Act has been renewed, 1974). Moreover, some of the provisions (on the surveillance duty of the parties and on the fine for breach of a

collective agreement) of the Collective Agreements Act were amended (1984 and 1986).

According to the Trades Act, 1879, the local Trades Societies had to perform mediation in industrial disputes. However, the system did not work, so mediation was instead conducted by state officials (*i.a.* factory inspectors). The mediation system was placed on a statutory basis in 1925 (Act on Conciliation in Labour Disputes). Now conciliation was in the hands of part-time district conciliators and special conciliators and mediation boards could be appointed. However, the disputing parties were under no obligation to take part in any conciliation procedure or even to inform the conciliators beforehand of strikes and lockouts. These defects were mended in a modernisation of the Act (1946) which even entitled the Ministry of Social Affairs to postpone intended strikes and lockouts under certain conditions. Further improvements were made in 1962 in a new Act on Mediation in Labour Disputes.

## **4 State Intervention in Labour Relations**

So historically Scandinavian labour law is heavily based on agreements among the parties involved and on Law on Contracts. Employment conditions were not settled by legislation. Furthermore, the Scandinavian system is characterised by a considerable authority of the organisations. Thus the organisation is even able to dispose of the rights of the individual member. This is important for instance when labour disputes are negotiated.

One important precondition of this situation is the fact that the level of unionisation rose to a level where there was no need for alternatives. Moreover, the collective agreements within the trades covered by the main organisations became normative for the agreements made on the rest of labour market. And the unions were able to safeguard themselves against abuse by the unorganised employers' side by enforcing closed shop clauses upon such enterprises.

So it could be said that the union movement managed well and needed no further support by the legislator. Therefore for a long time employment legislation was sporadic.

However, it was of course not possible to safeguard everybody by collective agreements. For instance small groups of employees in exposed positions had not the necessary collective strength. And there are situations of social need totally beyond the reach of the collective partners too (*i.a.* permanent disability).

### **4.1 Welfare Legislation and Social Security**

In ancient times the church took care of people who had no possibility to support themselves. But after the Reformation there was a growing feeling that this task was up to the state. In practice the burden was often left to the local communities. The social-security level was, however, low. Moreover, in the Nineteenth Century legislation in this field was marked by mercantilist ideas. One of them was to press persons in social distress into jobs. However, jobs

were not always available. To the growing proletariat of modern industrial society which had no security in the old family- and guild systems the situation became more and more untenable.

In the course of time this led to state intervention. However, to appreciate the forms in which this intervention manifested itself, it is necessary to understand the different ways in which social security may be organised:

One way is to let the public (the State or the local communities) take care of persons in social need. This system may be called social welfare or social assistance. Such assistance may be given on the basis of the situation of the needy person (temporary sickness, permanent disability, old-age etc.). And it could be differentiated if the situation is self-inflicted. Moreover, the substantial help could be based on an estimate of the degree of need or it could be paid according to fixed rates.

Another way is to create an insurance system financed by the beneficiaries of the system themselves on insurance basis (individually or collectively through their organisations) possibly subsidised by the State or others. Such insurance could be made voluntary or compulsory.

Finally, there is a possibility to base social security upon the employment relationship as such by making it part of this relationship as a compulsory employment condition.

Since the Reformation, the Scandinavian countries had a system of aid to the poor (mostly based upon the local communities). Normally, aid was not a privilege of the indigent person given according to fixed rates. Instead, it depended on discretion of the community representatives. Moreover, reception of help would often have discriminatory consequences for the indigent person (such as loss of the right to marry, to vote etc.).

It took a considerable time to develop the old system of aid to the poor into a modern social assistance one. Some examples: in Denmark new legislation was passed on aid to the poor in 1891 - but aid still had discriminatory consequences. Finland had a more modern legislation in the field in 1852 when aid was qualified as a genuine right for the individual. But later on this reform suffered a backlash. In Norway the already existing limited poor's aid in 1900 was somewhat modernised. Here it became the basic idea that able-bodied persons should enter the labour market and that the economic burden should then be laid upon the shoulders of the employers. In Sweden poor's aid was reformed in the beginning of the Twentieth Century and help became a citizen's right - but even up until 1936 aid still had discriminatory consequences.

Since poor's aid had negative effects on the recipient, it was widely supplemented by private insurance arrangements, which soon became subsidised by the State and eventually were even made compulsory. Indeed, the idea of collective insurance fitted well into the growing collectivisation of Scandinavian societies. In Denmark an Act was passed in 1892 on state subsidiaries to private sickness-insurance funds. In 1898 an Act on Accident Insurance was passed (see below 4.2.1), and in 1907 another one on Unemployment Insurance (see below 4.2.3). Finland had an Act on Accident Insurance in 1895 (see below 4.2.1) and the private sickness-insurance system was supported by legislation in 1897. Moreover in 1917 an Act on subventions for private unemployment insurance

was passed (see below 4.2.3). In Norway an Act on Accident Insurance was passed in 1894 (see below 4.2.1) and on compulsory sickness insurance for low-paid in 1909 (later on extracted to cover everybody). In 1915 private unemployment insurance had state subsidies - and in 1938 it was made compulsory (see below 4.2.3). Sweden had an Act on Accident Insurance in 1901 (see below 4.2.1). The private sickness insurance was subsidised by the State from 1910 and in 1955 it was made compulsory. In 1913 even compulsory old-age and disability insurance was introduced and from 1934 the unemployment funds had public economic support (see below 4.2.3).

This development contributed to the feeling that social need not covered by the insurance system should be handled differently from what had previously been the case. Therefore in Denmark disability pension was segregated from the poor's aid (1921). - Already in 1891 a special Act had been passed on public old-age pension. In Finland public old-age pension was introduced in 1937 and in Norway, a general old-age pension was established in 1936.

Another new trend was the growing understanding that social assistance schemes should not cover cases of actual need only - they should also prevent need from occurring. So in the course of time welfare legislation even came to include rules which made it possible to render various sorts of practical and economic help (*i.a.* to restore disabled persons in suitable jobs, job-training etc.).

In this way, social security developed to encompass all common cases of loss of income. However, often such developments took place as a consequence of casual political initiatives. Therefore, restructuring of the body of statutes was necessary from time to time. For instance in Denmark, social legislation underwent an over-all restructuring and modernisation three times - in the 1930s, 1960s and 1990s. And after WW II Norway had a social-security system like the Danish and Swedish ones and in 1966 and 1969 the most important in all of these Acts were moulded into one (now replaced by an Act of 1997).

## **4.2 *Rise of Responsibility for Social Security on The Job***

### **4.2.1 Health and Safety at Work and Industrial Injuries**

One issue of growing interest in the period of industrialisation was health and safety on the job.

Even old Scandinavian legislation contained some regulations of this sort. For example Swedish Ordinances on the guild system prescribed a minimum age for apprentices. Mid-nineteenth century Finnish legislation on the trades regulated the maximum daily working hours for children, children's work in general and night-time work for youngsters under 18. In Denmark Guild Ordinances expressively banned work exceeding the physical strength of the apprentice. In Norway the 1842 legislation on the mines (*bergverksloven*) dealt with security in the pits and public inspection.

However, industrialisation itself presented new challenges. For example in 1832 the technical development within the field of steam power had caused regulations on inspections of steam kettles in Denmark. Moreover, in 1858 the

local communities were ordered to issue common regulations on health conditions within the industry and to organise local health commissions to inspect all factories and to prescribe steps to improve working conditions.

Initiative towards a more comprehensive regulation on safety and health came from the industry itself. Thus in 1872 a Scandinavian industry meeting in Copenhagen made a resolution encouraging the governments to propose a factory legislation.

Legislation soon followed on specific trades in the Nordic countries. Its primary purpose was to secure women, children and youngsters against accidents and risks of health and to establish reasonable physical working conditions. However, even if such legislation did only apply to special groups, many of its rules indirectly affected ordinary grown-up workers. So slowly the daily working hours were reduced and work on Sundays and public holidays became less common. And of course the grown-up workers prospered from the demands of the new legislation concerning dangerous machinery.

Already in 1873 a Danish Act was passed aimed mainly at protection of children and youngsters in industrial work. Children's labour was prohibited and so was nightwork and work on Sundays and public holidays for youngsters. Furthermore, net working hours related to age was prescribed. For enforcement of the law a State Factory Inspection was established. In 1889 an Act on prevention of job accidents in connection with the use of machinery and on public inspection was passed too. And gradually legislation was extended to all sorts of industry and trade. In 1954, the body of rules was reorganised and combined into a general legislation on health and safety at work for blue-and white collar workers. The present Work Environment Act dates from 1975. It should be added that an Act on annual holidays was passed in 1938.

Sweden had a Royal Ordinance in 1881 on the Employment of Minors in Factories, Workshops and other Industrial Establishments followed in 1889 by an Act on Protection against Occupational Hazards. Moreover, a factory inspectorate was created for securing the observance of the Act. In 1912, a more general legislation on health and safety at work was issued and in 1919 an Act was passed on limitations to the daily working hours for manual workers. In 1938 a general Act on annual vacations was passed, and in 1977 Sweden had a modern Act on work environment.

In 1889, Finland had an general legislation on protection of industrial workers' safety. In this context, a public factory inspection was organised authorised to order the employers to take necessary steps to fulfil the requirements of the law. By new legislation (1908, 1914, 1917, 1930 and 1958), the coverage of the rules was extended to almost all workplaces, and the prescriptions gradually became more and more detailed. In this context by the Act of 1917 the eight-hour day was introduced.

Norway had the first modern Act on health and safety at work in 1892. It contained rules on factory inspection and on protection of women and children. The Act even included some regulations on the individual labour contract. Gradually, the coverage of the Act was extended to all sorts of enterprises within industry. From 1915 legislation prescribed maximum working hours (54 hours a week, from 1919, 48 hours for adult male workers). In 1936 a general workers'

protection legislation was made covering all trades (renewed in 1956). It contained some rules on annual holidays (in 1947 transferred to a separate Act, now Holiday Act of 1988). In 1977, the present Work Environment Act was passed.

The growing risk of accidents following industrialisation naturally attracted attention too to the economy involved when a worker was temporarily or permanently disabled by an industrial injury.

One possibility was to extend already existing rules on employers' liability to pay damages. For a long time only Law on Damages was available to the employees - but this possibility was exploited. So by and large it became usual among employers to make private insurance arrangements covering such risks. This development gave rise to three questions: should such insurance be made compulsory for the employers? Should it cover all trades? And should it cover even accidents not caused by the employer's negligence?

Norway had an Act on Industrial Injuries in 1894. It was administered by a public institution (the National Insurance Office). According to the Act insurance was compulsory and even accidents not caused by negligence were covered.

In 1895 Finnish industrial employers came under an obligation to pay even for industrial injuries not caused by the employer's negligence. As for damage leading to permanent disability or death of the employee, insurance was compulsory. Coverage of the Act was later extended, but it was not until 1925 a compulsory insurance came to cover all employees.

In 1898 a Danish Act on insurance for industrial injuries was passed. This Act entitled the employee to a daily benefit in case of injury and his heirs to a sum of money if an industrial accident caused his death. The Act, however, did only cover some trades, and the employers were under no obligation to transfer the risk to an insurance company. But later on the coverage of the Act was extended and it became an obligation to make an insurance through a company recognised by the State.

Sweden had an Act on voluntary insurance against industrial injuries in 1901. However, compensation according to the Act was low and no payment was made until the expiry of a qualifying period. But already in 1916 a legislation was passed on compulsory insurance of all work for an employer.

#### **4.2.2 Loss of Wages During Employment**

One major issue was the loss of income when an employee became unable to perform his work due to for instance sickness.

There are two different ways of covering this risk: an insurance system could be organised or the risk to pay wages even during an employee's absence from work might be placed upon the shoulders of his employer.

Since ancient times some groups were in fact covered by employer payment: some legislation stated that an employer had to ensure that his employees would not become a burden upon the public assistance system. Moreover, legislation on agricultural and domestic workers specifically entitled such employees to their full normal pay even if they were unable to work due to sickness.



In addition, a full-pay system developed by collective agreements and individual contracts for some groups of employees. And in Finland the 1922 Employment Contracts' Act entitled all employees to full pay during disease until expiry of normal notice for termination of the contract - yet not exceeding 14 days (later on this period was expanded). After the period covered in this way, the health insurance system applied (and for some employees a voluntary sickness insurance).

In Denmark developments took an interesting turn. Within the field of white collar workers (called "functionaries", *funktionærer*) the necessary practical precondition for collective bargaining - a minimum number of employees in similar jobs - did not exist until after WW II. But the employment contracts of a white collar worker was normally more permanent than those of workers and craftsmen. Therefore a legal construction slowly developed based on the only Act dealing with ordinary contracts of employment of a more durable nature: The Domestic Servants and Farmhands Act. This Act decreed obligations for the parties, *i.a.* with respect to terms of notice, wages during disease etc. Therefore, as for white collar workers it was assumed that rights should be granted based on parties' assumptions ("*naturalia negotii*") and that these should not be less favourable to the employee unless something different had undoubtedly been agreed upon in their contract. This system of "presumption rules" slowly developed in case law until the mid twentieth century, granting the employee wages during military service, absence due to pregnancy etc. And in 1938 an Act was passed (White-Collar Workers Act) giving the existing body of assumption rules the character of inderogable law.

However, many employees were not covered by any specific legislation on sickness. So in line with Scandinavian tradition, it did not take long until sickness benefit funds were organised on a private basis by employees not covered against this risk by their employment contract or by a collective agreement. This system slowly became compulsory by legislation and it might even be supplemented so as to cover pregnancy and permanent disability too. For instance, the Norwegian Social Security Act (*folketrygd*) even covered absence from work due to disease. In Sweden, collective agreements on the issue prevailed. However, when the sickness and pension schemes were codified in 1962 into a general Act on Common Insurance all employees were entitled to a minimum daily cash benefit (financed by dues paid by the employers).

In Denmark, ordinary blue-collar workers had to resort to private insurance arrangements since their contracts of employment did not render any protection against loss of income in case of disease. Moreover these questions did not become a common issue of collective bargaining. But in 1973 an overarching Sickness and Maternity Benefits Act was passed covering all types of employment relationships. The Act obliged the employer to pay a daily cash benefit (up to a certain percentage of normal pay) during the first weeks (called employer's sick-pay liability period). After that the local community had to pay. However, if the employer according to other legislation (for example Act on White Collar Workers) or collective agreement was obliged to pay full wages for a longer period than his liability period, he would have the daily cash benefits in repay from the community.

The Danish idea to integrate the insurance system into the employment relationship served to strengthen the feeling of responsibility within the enterprises on both sides. So in 1978 the Norwegians copied the idea: Employers now had to pay full wages for a liability period. Situations not covered in this way were dealt with by social security system. From 1991 even Sweden enacted the same model as Denmark and Norway.

Pregnancy was a different problem and the tendency here was to cover this by way of (public) insurance.

### **4.2.3 Unemployment and Protection Against Dismissals**

Unemployment of course was a major concern. This risk can be handled in three ways: 1) by employment protection against dismissals, 2) by economic subsidies to the ones who actually get fired and 3) by a labour exchange system facilitating their possibilities to find a new job.

#### **4.2.3.1 Protection Against Dismissals**

One could believe that the insecurity on the field of employment might have caused an early statutory protection against dismissals. However, there was no general trend of this sort in Scandinavia. Such rules only applied (to some extent) within the scope of the old regulations on agricultural and domestic servants and the guild system. So for a long time, much depended on the collective power of the unions to make collective agreements on terms of notice and limitations to the employers' right to fire according to will.

However, in 1922 Finland passed the general Employment Contracts Act. This Act actually covered most types of employment relationships and it prescribed *i.a.* form and duration of labour contracts and terms of notice. Protection against dismissals was introduced by collective agreement in 1966 and by Employment Contracts Act in 1970.

A similar tendency to unify legislation on all sorts of employment contracts is found in Sweden later on. Here employment protection was for mainly based on collective agreements supplemented by a couple of statutes. But in 1974 the present general Employment Protection Act was passed prescribing comprehensive regulations on protection against dismissals.

In Denmark, no tendencies in this direction gained ground. Within the field of domestic servants and rural workers, the legal basis became an Act of 1921, according to which a person employed month by month was entitled to have a notice. For white-collar workers interference rules of notice existed on an equal basis based on case law (see above 4.2.2) and these rules were later on codified in the White-Collar Workers Act. Within industry and handicraft almost no development took place as far as prescriptions on terms of notice. So generally a worker could claim no notice at all or only a very brief one according to the collective agreements. And no limitations existed in the employers' right to fire according to will. Only some protective rules were established in the collective agreements in order to avoid dismissals of local union representatives. It was not until the 1960 "Basic Agreement" the idea of a protection against unfair dismissals arose (in fact inspired from Norway).

Developments in Norway had taken a special direction. The Act on Employment Protection of 1936 actually contained 1) rules on the physical protection against industrial accidents and injuries, 2) rules on the working hours and 3) rules on what was regarded vital protection of the employee (such as protection against unfair dismissals – which have been further improved in 1956 and 1977 - and on holidays).

#### 4.2.3.2 Unemployment Insurance

According to Scandinavian tradition to find collective solutions to occurring problems, private unemployment funds of course were from a very early stage organised and financed by the unions (and for union members only) as an alternative to the ordinary poor's aid. Often according to the Rule Books of the unions, it was even compulsory for a union member to join the union's unemployment insurance. The funds had two main purposes, viz. partly to help the individual unemployed and partly to stabilise employment conditions in general and thereby also strengthening unions negotiating position versus the employers.

Insurance against unemployment of course attracted the state's attention since it was in reality an important part of the general welfare and social security system. Therefore in the course of time Acts were passed which made it possible to give public acknowledgement to such funds and thereby substantial financial support. Recognition of funds could be given under certain conditions referring to for example membership, size of contribution from the members, the right to have the unemployment benefit, the sort and size of this benefit, etc. Furthermore, a condition could be that the fund should be inspected by a public inspector and that aid from the fund was to be neutral, that means that the unemployment benefits were to be stopped if unemployment was caused by a labour conflict. Finally, that union members as well as non-union members were to be allowed to benefit from the unemployment insurance. Legislation within this field was passed, *i.a.* in Norway 1906 and 1915, Denmark 1907 and 1921, Finland 1917 and 1934 and Sweden 1934. In Norway insurance against unemployment was even made compulsory from 1938 (due to insufficient support to the voluntary system). And in Finland the voluntary insurance system was supplemented by a public unemployment daily cash benefit system (1959).

#### 4.2.3.3 Labour Exchange

Early on also the unions started labour exchange services as one of the tools in the economic struggle on the labour market. The employer side, of course, claimed that any employment service which was not based upon equal influence by employers and employees involved a risk of abuse from the union side. But the employers did not establish an employment service of their own.

However, in the course of time the State took over labour exchange by establishing local labour exchange offices (possibly by the local communities). For a period in Sweden, Finland and Denmark official offices were even given a monopoly on labour exchange (Sweden from 1935, Finland 1926, Norway 1947

and Denmark from 1969). But now State monopoly on labour exchange does not exist any more.

## **5 Integration: Co-Influence and Co-Determination**

The ideological basis of the employment relationship until modern times was that it was a contract of services. This implies a presumption that, at workplace level, the final decision on a whole range of everyday matters is in the hands of the employer (called employer's managerial prerogative – *ledelsesret /styringsret*). This ideology became the very basis of collective agreements as well as individual employment contracts (mirrored in *i.a.* the September Compromise). Moreover, since a Scandinavian collective agreement imposed a peace obligation on the parties, the employees were normally not permitted to refuse according to the directives of the employer even if they held them to constitute breach of the agreement. They had to work on and resort to the procedures of dispute resolution. In Finland before the collective system had established itself the employers' right to rule and manage was even confirmed by a system which gave the employer the right to prescribe so-called shop rules for the individual enterprise. So as a companion statute to the Employment Contracts Act 1922, a separate Act on Shop Rules was passed giving such rules a more collective, two-sided and officially controlled nature. Still the shop rules were drafted by the employer – who, in certain, trades even were obliged to make such a draft containing specified matters. The rules should be presented to the employees to hear their opinion, which had to be sent to the authorities together with the draft (which, however, was to be accepted by those authorities unless it was unlawful or contained unfair stipulations).

This situation of course was unsatisfactory to the employee side since it left it completely in the hands of the employers whether consideration should be taken to the interests of the employees or not - even when vital managerial decisions were taken which affected the situation of the employees. Moreover, experience slowly proved that it might be in the best interest of the enterprises themselves too to integrate the employees themselves in decision making.

So slowly the employer's attitude on this issue changed and gradually the old concept of the relationship between employer and employee was modified to an extent so that today managerial prerogatives could be almost invisible.

However, many problems arose as to the legal technicalities. How should limitations to the employer's power to decide according to his own discretion be construed?

One of the major problems in restricting the freedom of management in order to give consideration to employee interests is the mere practical impossibility of laying down a policy, by prior legislation or collectively agreed provisions, on every issue that may call for a managerial decision from day to day. Nevertheless, attempts have been made in various ways to give employees some influence over decisions that affect them significantly, that is to say to establish participation and co-determination (*medindflydelse* and *medbestemmelse*).

A characteristic feature in this respect is that most efforts to establish influence over management have channelled this through collective institutions, that is to say collectively elected employee representatives – and or as in Sweden through the unions (as representatives of the employees of the enterprises), see the article by Edström below. Moreover the degree of influence provided varies. It may involve no more than the provision of information for the employees on relevant matters or it might oblige the employer to seek employees' views before management decisions are made - or even negotiate the matter. Or it might enable employees to participate in the decisions themselves. The employees might even be permitted to take the employer's place in actually making decisions or ensure employees a degree of influence within the enterprise's management bodies, which by definition is decisive (casting vote). Also, the provisions of modern Scandinavia represent a mixture of procedural and material rules developed over the years. Thus they could be mere procedural rules for the decision-making process itself (for example the obligation to consult employees), rules on bodies for co-operation (for example the workplace co-operation committee) and rules on participation in the actual management function (employee representation on the board of directors).

Already when the first collective agreements were made, a system was developed where the shopfloor representative of the workers (the local union representative) got a special position. This was recognised in some of the first Danish collective agreements under the September Compromise (starting 1900 in the iron industry). From 1907 major Norwegian collective agreements followed suit, and in the course of time, rules on local union representatives were incorporated into the Norwegian Basic Agreement (1935) and similar agreements.

In Sweden and Finland legislation was introduced on this field. An Act was passed in Sweden in the 1930s on employees' right of association and of negotiation, and in 1974 a special Act was passed on shopfloor representatives. When the situation in Finland stabilised during the 1940s rules on shopfloor representatives were accepted by the employer side, and the 1970 Employment Contracts Act even included this issue.

The substantial rules could give provisions which entitled unionised employees to elect one or more representatives within the enterprise (or department) or establishment in which they were employed. The election procedure itself might also be regulated, and in addition particular rules on the representative's functions might be provided. Normally, the provisions also provided special protection against dismissal for the local union representatives.

It should be mentioned that a similar system of employee representation developed within work environment where the employees were granted the right to elect safety representatives.

The next step of dissolving the absolute prerogative of the employer in Scandinavian labour law was to form co-operation committees. The idea of such committees was to constitute a body composed of workforce and management representatives with the purpose of promoting co-operation at individual workplace level and dealing with policy-making and more general issues of the running of the enterprise. This idea established itself in Norwegian legislation

already in 1920 and was accepted by the social partners of that country in 1945 in a general collective agreement (the rules now form part of the Norwegian basic agreements). In 1946 a similar development took place in Sweden based upon collective agreements. And in 1947 a co-operation agreement was made in Denmark between the main organisations. In Finland attempts were made around the same time, but did not produce a system corresponding to the systems of the other Scandinavian countries.

Moreover, Scandinavian company law was amended (Norway and Sweden 1972, Denmark 1973 and Finland 1990) so that employees in *i.a.* limited companies were entitled to elect representatives to sit on the board of directors.

As the years passed, the wish grew to find more direct ways of channelling employee influence on the daily decision-making. This can be obtained by limiting employers' right to decide without prior information to, hearing of, consultation or negotiation with the employees involved (or their representatives). So rules to this effect were sporadically fitted into collective agreements even from the very early days of the collective bargaining system.

However, it is also possible to change the very basis of the collective system. Sweden was at the front of this latter development. Based upon a comprehensive work of a Royal Commission, a reform of Swedish labour law was designed in the mid 1970s. Legislation was amended on essential points in order to secure the trade unions' influence and possibly co-determination in a growing number of matters in order to increase job security and job satisfaction for the individual. Moreover, the intention of the new legislation was to acquire for the employees possibilities to gain influence on their own situation, their jobs and their workplaces. From now on legislation became the primary method for the creation of new industrial relations and for gains in accordance with the demands of the trade unions. However, secondary to legislation, collective agreements remained important instruments to supplement and even to replace legislation where it contains negotiable elements (which the new legislation does to a considerable extent). A primary feature of this new body of rules was that to a high degree employees interests have been channelled through the unions.

One important part of this reform was the Employment Protection Act mentioned above under 4.2.3.1. Another one was a special Act on Co-determination (1976), which regulated the fundamental principles of collective labour law. Its primary purpose was to extend and complete the former legislation especially with an increased and reinforced right of negotiation for the unions thereby increasing the capability of the employees to influence management. The Act handed over to the employee side the already mentioned prerogative of interpretation of the collective agreements in case of dispute (until legal decision could be taken by a court). Another important amendment to the collective system prescribed by the Act obliged the employer to negotiate on his own initiative with the local union before important decisions were taken on production, management policy as regards the employees, changes as to the working conditions of his employees etc. Moreover, legislation stated that the employers ought to make local collective agreements on matters of establishing and terminating employment contracts, management decisions on work distribution etc. And the unions were given the right to launch a strike in spite of

the existing peace obligation if the employer refused to make such an agreement. The employees were also granted the right to go against a decision to transfer the work to another enterprise.

In 1978, Finland introduced legislation which to some degree was inspired by the new Swedish model. The old Shop Rules Act was abolished and a Act on Co-operation within Undertakings was passed. Now shop rules are to be adopted by the employer and the employees' representatives. Moreover, the parties must co-operate on certain other matters prescribed by statute (*i.a.* change of work-methods, rationalisation, employment protection, hiring policies etc.). In certain social matters the employees even have the right to decide. And employers have a wide-ranging obligation to inform as to the economic situation of the enterprise.

Denmark and Norway did not follow the Swedish model. However in a number of collective agreements and according to certain Acts employers are under an obligation to inform, hear or consult the employee-side.

## **6 Turbulence: Growing State-Intervention, Internationalisation, Market-orientation and Reorganisation**

As it may be seen from above, the organisations on the Scandinavian labour market were powerful factors when the collective labour law was designed. The main structure of labour law within the fields of collective agreements was based on collective agreements eventually followed by legislation.

Moreover, normally the governments did not interfere in the market mechanisms behind establishment of collective agreements. So it was up to the organisations involved and to their physical power to gain influence. On the other hand, a trend developed to hear the opinions of the organisations before social legislation was introduced. In this way, the organisations gained important influence on the development of legislation. In the same way, they came to participate to a remarkable degree in the work of public organs within the labour market. So the organisations gained a special function too. Even the explosion of labour legislation which took place in Sweden in the 1970ies has this basis – the Swedish LO simply decided to further their interests via the political system instead of the negotiation table.

The central role of the Scandinavian organisations can be seen as a consequence of the fact that they are – seen in an international context - relatively homogeneous (and free of internal competition). Furthermore, it is important that no major problems of a national, religious or linguistic nature exist(ed). Finally, one must observe the fact that the core of the Scandinavian union movement was undogmatic socialists (Social Democrats) are of importance.

Of course, traditional reluctance by the Scandinavian governments to interfere in labour market affairs must have limits. As mentioned above some elementary protective rules and factory legislation were introduced at an early stage - over the years followed by Statutes considered to be vital to society. And even renewals of the collective agreements did not take place either quite without interference from the legislator. For instance, in Denmark during the

world crisis of the 1930s employers' demand for a reduction in wages of about 20 percent provoked the Social Democratic government to perform an Act on prolongation of the collective agreements. Similar interference of various sort took place in other Scandinavian countries from time to time later on when the social partners could not come to terms themselves and society's vital interests were at stake.

It was always a matter of delicacy to which degree interference in labour market affairs was justified or not. However, until recently this delicacy was exercised based upon trends and opinions within Scandinavian societies alone.

In this respect, at the end of the Twentieth Century, Nordic labour law came to what seems to be a turning point. The main reason is that from the 1970s onwards, the Scandinavian countries integrated international regulations into their national legal systems. This applies to international standards on human rights - which do in some respects form a threat to the monopoly of the traditional Scandinavian union movement. Important rules of this sort were implemented by Finland from 1970, Denmark 1994, Sweden 1995 and Norway in 1999. Moreover, in 1972 Denmark decided to join the European Common Market. Later on, Sweden and Finland followed - and Norway even if this country is not a member of EEC by special convention joined the same sets of substantial rules. The consequence was that the growing number of EC/EU regulations on employment conditions have to be fitted into the traditional Scandinavian patterns.

It goes to say that this development has not been unproblematic since it is not possible to implement EU-regulations by means of collective agreements of the traditional Scandinavian model. Moreover, the substantial EU-rules are not always in harmony with local Scandinavian law-tradition (not to say substantial labour law). In Denmark this has caused frustration and even hostility to EU employment legislation.

Moreover, the body of rules formed over the years in Scandinavian labour law - in particular on settling wages - has proved to be not fully fit in the fluctuating market conditions of modern societies. Therefore, during recent years, all the Nordic countries have experienced a trend to reorganise old labour market regulations. One major tendency in this context has been to turn the core of negotiations on wages back to the local level where the parties have been given the task to agree upon the exact wages for the individual employees or groups of employees within frameworks prescribed by the national collective agreements. Another one has been either to modify labour statutes which had become too tight over the years or to make the statutes "semidispositive" (meaning open to deviation by collective agreement).



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