Unification of the Labour Law in the Nordic Countries

By Kent Källström*

1. A person who looks at the labour law systems of the Scandinavian countries from outside mostly finds them constituting a unit in the same way as a Scandinavian lawyer finds the labour law system of the different states of the United States of America composing a unit. There are differences but to a large extent the regulations have the same structure and are based on the same principles. For example in the Nordic countries, the individual employment is formed primarily by means of collective bargaining and not by statutory rules. Finland is the only country with a general law on employment contract. Another example is that the collective agreements of the Nordic countries are binding upon the organization and on the individual members as well and that the most important obligation of the collective agreement is the peace obligation.

The similarities in the labour law systems are, however, not a product of the cooperation between the legislators, at least not a formal one. It is true that the organization representatives and the officials of the state department have established informal contacts and that this personal contact has had a great impact on the practice of the organizations and on the legislation as well. Famous is the first Scandinavian union conference of Gothenbourg of 1886. From that time the Scandinavian unions ideologically can be regarded as a unit though there are national characteristics and though efforts to create Nordic federations have failed (Adlercreutz, Kollektivavtalet s 201 f). There are several examples of laws which can be seen as a result of informal contact between the lawmakers. The legislation on equal opportunities for men and women in working life in Sweden, Norway and Finland (1979, 1978 and 1986) is one example.

The similarities in the substantive rules on the labour market is thus due to informal contacts between representatives of the organizations and to the similarities in the structures of the organizations. The latter is probably the most important. The Scandinavian countries (i.e. not Finland) have the same basic features; (a) strong unions on both sides which have more or less a monopoly, (b) centralized bargaining systems with industry wide agreements on wages and working conditions and basic agreements with grievance procedures which restrict the unions' right to offensive action (i.e rules which in many other countries are laid down in statutory rules), (c) high rate of organized workers.

There are, however, one example of uniform law in the labour law field. The Merchant Seaman Act of 1952 (Denmark and Sweden) is an example of a common Nordic legislation (1953 in Norway and 1955 in Finland). This act is an exception and the conditions of the seamen are particular – these groups are difficult to organize as the ship crews change rapidly all the time.

2. There have been several proposals to deepen the cooperation between the governments and to make the labour law legislation more uniform.

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In 1955 the government of Norway made a proposal to the Nordic Council (Nordiska rådet) about a review of the legislation on working environment and collective bargaining in order to create unity (Nordiska rådet 3:e sessionen, 1955, s 624 f). The government of Norway had found that in spite of the fact that the Nordic countries was one labour market with possibilities for residents to enter employments in any of the countries there were important differences in employment conditions due to the differences in the statutory regulation.

The Norwegian government pointed out four areas where the differences were significant. Firstly was pointed out that Norway since the 1930's had had a general employment protection based on statutory rules (lov 1936 om arbeidsvern) while this kind of rules were unknown in Sweden and Denmark. (Such a legislation was passed by the Swedish Parliament in 1974 and in Finland 1970 without any connection with the Norwegian proposal).

Secondly the Norwegian government had found that Norway was the only Nordic country which had criminalized the breach of a collective agreement – the other Nordic countries had chosen a special kind of damage ("bod" in Denmark, "allmänt skadestånd" in Sweden and "plikt" in Finland). The lawmakers in these countries found that a compensation according to private law was preferable to a criminalization as a damage is less depreciatory to for example striking workers. The experience from Sweden was that it was important not to let strikes become a police matter. The public authorities should be able to take a neutral position in the conflict between the employers and the unions. An interesting fact in that the Norwegian labour law by that time was based on a provision in the penal code that a person who left his employment contrary to the employment contract had committed a criminal offence. The inducement to such a break of contract was also criminalized in a way which reminds of the principle of common law.

This criminalization was not abolished in Norwegian law due to coordination among the Nordic countries. Like in many other cases the coordination of the legislation has been brought about mostly as a result of the work within the International Labour Organization and the Council of Europe. The ILO convention on the abolition of compulsion to work of 1957 as well as the article 4 of the European Convention on Human Rights of 1950 provide that nobody may be compelled to work under threat of penalty. The Norwegian criminalization of the refusal to work was of course contrary to these conventions. Even compelled work in the uniform Merchant Seaman Act of the Nordic countries was abolished since the legislation had been criticized by the Committee of Independent Expert of the Council of Europe (Conclusion I p 15).

The difference between Norway and the other Nordic countries still remains if we look at the sanctions for the breach of a collective agreement. As mentioned the criminalization has been abolished in Norway and these provisions have been replaced by the general rules in private law on liability for damage. Unlike Sweden, Denmark and Finland the breach of a collective agreement in Norway only leads to liability to cover the economic loss, not general damage.

The third area where the Norwegian government was seeking coordination with the legislation of the other Nordic countries was the legislation on collective bargaining and the right to strike for employees in state service. The differences between the countries in this respect had become obvious at the regular meeting of lawyers of the Nordic Countries in Oslo 1954 (see Förhandlingarna