MODEL FOR MEDIATION - A tool for equal opportunities on the labour market

Mediation in Croatia

COUNTRY REPORT

Republic of Croatia

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CONCILIATION PROCEDURE IN THE REPUBLIC OF CROATIA

INTRODUCTION

Universal Declaration of Human Rights, Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms as well as many other international conventions and agreements regulate the right to a fair trial as one of the fundamental human rights.
One of the necessary elements of a fair court proceeding is trial within a reasonable time which implies protection of all parties from delaying court proceedings and from legal uncertainties. The right to a trial within reasonable time represents a significant problem in regular court proceedings which are rarely completed within prescribed legal frameworks.

Namely, the Civil Procedure Act prescribes the deadlines for settling labour disputes in the way that labour disputes must be settled in courts of first instance within 6 months from the date of filling a complaint, whereas courts of second instance must settle a dispute within 30 days.
In the practice of Croatian judiciary labour disputes last three to five years in average. In the Municipal Court in Zagreb alone there are 16 000 labour disputes at the moment, 70 percent of which is due to non-payment of wages, difference in wages, severance pay and other material entitlements, and 30 percent due to unlawful cancelation of employment contracts.

In order to change this situation of long duration of court proceedings the Ministry of Justice, as the holder of the entire judiciary system reform, started a project related to alternative settlement of all labour disputes including individual ones.

1. MATRA PROJECT

In 2004 the Government of the Republic of Croatia reached a conclusion which expressed its willingness to undertake certain actions towards reducing the number of disputes in courts in the way to provide institutional conditions in the Office for Social Partnership to enable conciliation in settling individual disputes.
Therefore, at the initiative of the Government's Office for Social Partnership and supported by the Ministry of Economy, Labour and Entrepreneurship, the Ministry of Justice in cooperation with the Centre for International Legal Cooperation from the Netherlands started a two-years project in March 2006 under the title *Conciliation In Individual Labour Disputes*.

Main features of the project were the following:

- to organize the implementation of conciliation procedures as well as to establish a body which would solve administrative tasks related to conciliation procedure;
- to choose candidates to be educated in conciliation procedure among judges, Croatian Employers` Association, trade unions and trade union confederations;
- to provide resources;
- to develop by-laws and necessary forms;
- to educate conciliators.

The project is financed within the pre-accession programme of the Dutch Ministry of Foreign Affairs which educated 29 conciliators and developed legal basis as well as the model for implementation of conciliation procedure.

2. WHAT IS CONCILIATION?

Conciliation is a form of mediation in which parties settle their disputes under the leadership and with help of an independent third party – conciliator and in which the solution in the best interest of parties is sought for.
The legal framework for implementation of conciliation procedure is defined in the Labour Act, Conciliation Act, Rules of Procedure for Electing Conciliators and Implementing Conciliation and the Decision on the Criteria to Pay Conciliators` Compensation and Expenses. The Rules of Procedure for Conciliation in Individual Labour Disputes define in details the procedure of conciliation in the individual labour disputes in the following way:

Conciliation is a voluntary, informal, confidential, quick and cheap procedure which ends in agreement whose form and content are defined by parties themselves. After parties agree on agreement's content, the agreement is concluded before the conciliator in a form of minutes. After a public notary validates it, the agreement becomes execution title.

Conciliation procedure is started at the request of one party which is accepted by the other party or at the joint request of both parties. Parties, their authorized persons or advisers,

conciliator as a third independent person and experts, where appropriate, participate in the process of conciliation. Parties choose a conciliator from the list of conciliators which exists in the Government's Office for Social Partnership and if they cannot agree, the conciliator is appointed by the President of the Economic and Social Council.

The procedure can be started at any time before, during or after legal proceedings if parties want to regulate their relations in a way different than the one regulated by court's ruling.

It is foreseen that the conciliation procedure lasts five days at the most and that within that period one or more joint meetings between parties and the conciliator are held, at which the conciliator hears the parties on questions at issue and circumstances of the dispute and encourages them to settle the dispute by mutual agreement.

Furthermore, the confidentiality of the procedure is guaranteed in the way that the statements given by the parties in an unsuccessful conciliation procedure cannot be used as evidence in court, administrative or any other proceeding, whereas the parties and the conciliator are obliged to keep the data from the proceeding secret.

Hence, the parties cannot suffer any legal consequences due to their failure to reach an agreement, but they can benefit from an unsuccessful conciliation procedure as well, from the point of view of promoting communication skills and agreeing on opposed positions.

Regarding procedure expenses, conciliator's compensation and expenses, they are covered by parties as agreed whereas each party covers its own expenses and expenses of experts hired by that party.
There is no system of compensating for procedure expenses for parties in a dispute.

2.1. ADVANTAGES OF CONCILIATION VS. COURT PROCEEDING

- court proceeding is public, and conciliation is secret (all information revealed in conciliation procedure are confidential and cannot be used in or outside legal proceeding),
- court proceeding is strict and formal, and conciliation is informal and flexible and it takes place in a comfortable environment,
- in court proceeding parties convince themselves and the judge regarding their legal status according to law, and in conciliation the interests of parties are important, and not the justifiability of their demands according to the law,
- in court proceeding the judge makes the decision regarding the dispute instead of parties, and in conciliation the parties decide themselves about the dispute (their own solution of the dispute),
- court decision results with winners and losers and it often happens that the party who won the dispute is not satisfied with the decision, in conciliation procedure both parties are winners because they managed to settle in accordance with their mutual interests,
- the outcome of the court proceeding is uncertain, and the settlement in conciliation rules out the risk of unfavourable court ruling,

- court ruling disrupts the already strained relations between parties in the dispute, and the settlement of the dispute through conciliation makes all parties content and enables the preservation of good relations in the future,
- court proceeding is long-lasting and expensive whereas conciliation is very quick and cheap.

What are the consequences of an unsuccessful conciliation procedure?

Parties do not suffer any legal consequences due to failure to settle the dispute in conciliation procedure. In the case of an unsuccessful conciliation procedure, the option to settle the dispute in court still remains. Besides, parties can benefit even from the unsuccessful conciliation procedure. Apart from being in an informal environment during conciliation, parties can promote their communication and thus harmonize opposing positions. As consequence, they can settle the dispute after only a couple of hearings. The judge reaches the decision.

3. STATISTIC INDICATORS

Type of dispute	2006	%	2007	%
Starting a labour dispute before the appropriate court				
- due to dismissals	2194	2.0	1824	1.8
- due to material entitlements	19486	17.9	8422	8.3
- other	1966	1.8	1301	1.3

- about a hundred conciliation proceedings is started each year
- most of them are in state-owned companies, and only 10 percent in courts
- not present in private-owned companies
- success of the proceeding is increasing and is now between 60 and 70 percent
- majority of conciliation proceedings is in construction, metal and food industry
- mediation is obligatory under collective agreement for construction and catering industry
- at county level, conciliation procedures are most often in Zagrebačka County

Conclusion

Conciliation is one of the most important instruments for achieving easier approach to judiciary and achieving freedom, security and justice, so individuals and companies would not be discouraged in achieving their rights due to incompetence or complexity of legal and administrative system.

The aim of conciliation is to reduce the number of labour disputes in courts, reduce expenses and create a tolerant environment for economic and social development.

4. PROTECTION OF WORKERS` DIGNITY IN THE REPUBLIC OF CROATIA

4.1 DEFINITION

Protection of workers` dignity in the Republic of Croatia is regulated solely through the Labour Act.

This Act protects the dignity of workers who are exposed to harassment or sexual harassment at their work places by their employers or other persons such as their superiors, co-workers and others they come in contact with while performing their tasks.

Workers` dignity relates to the question of existence of harassment or sexual harassment in work places.

Harassment is every form of unwanted behaviour which aims at violating worker's dignity and at the same time causes fear, hostility, humiliating or offensive environment.
Sexual harassment is every verbal, nonverbal or physical behaviour of sexual kind which represents the violation of worker's dignity.

By defining the above terms, the Labour Act imposes the following condition: in order for each unwanted behaviour to be considered harassment or sexual harassment, it has to be caused by basis listed in the legal provision.

Hence, it must be caused by discriminatory prejudice on the basis of race, gender, sexual orientation, marital status, family obligations, age, language, religion, political or other conviction, national or social origin, assets, birth, social position, membership or non-membership in a political party, membership or non-membership in trade union and physical or mental disability.
The Labour Act leaves out the open type clause, i.e. it does not recognize as harassment unwanted behaviour based on other grounds, which can often happen in practice.

As a preventive measure, the protection of workers` dignity is regulated by an imperative provision which orders employers to provide working conditions for workers, while performing their tasks, in which they will not be subject to harassment or sexual harassment.

4.2. PROCEDURAL PROVISIONS

Employers shall within eight days from the day of receiving a complaint, examine the complaint and undertake appropriate measures in order to stop the unwanted harassment or sexual harassment if determined that they exist.
Employers employing more than 20 workers shall appoint a person who, besides the employer, will be authorized to receive and solve complaints related to the protection of workers` dignity.

If the employer or the authorized person does not undertake any measures or if the undertaken measures are not appropriate in certain cases, workers have the right to stop working until provided appropriate protection.
In order for the interrupted work to be legally justifiable, and for a worker to be entitled to wage during the interruption of work, the worker must request protection from the competent court within eight days.

The possibility also exists that the worker stops working without prior turning to the employer in cases when it is not to be expected that the employer will protect worker's dignity. In this case the worker must seek protection from the court and within eight days inform the employer thereof.

When the court proceeding is started, the worker is entitled to claim non-material damages and to request certain measures to be undertaken to stop further harassment.
Court proceedings related to protection of workers` dignity are characterised as labour disputes, and the expenses are covered by the employer.

There is also an option to regulate proceedings and measures for protecting workers` dignity through collective agreements, agreement between works council and employer or through rules of procedure.

The Labour Act does not provide for penal provisions which would qualify each violation of legal provisions related to protection of workers` dignity as misdemeanour, hence it also does not provide for the possibility of punishing employers on that grounds.

4.3. WANTED APPROACH

Efforts to fight against harassment at workplace through normative way follow the five main approaches:

- a special law, currently in the process of drafting, which would regulate procedures and measures of protection workers from different forms of harassment and violence at workplaces. It would also contain penal provisions which would provide fines for employers in cases when they fail to implement legal provisions related to protection of workers` dignity.

Note: the Act on Fighting Discrimination which contains the above-stated elements enters into force as of 1 January 2009, hence it is too early to talk about its implementation.

- Collective agreements which regulate those issues
- A large number of collective agreements containing measures for protecting workers` dignity are already into force

- Codes of behaviour regulate those issues entirely or supplement legislation or collective agreements.

A positive example is Corporate Ethics Code enacted by the Croatian Chamber of Commerce which emphasizes the need to protect workers` dignity at workplace, provides for the

possibility of presenting labour disputes between workers and employers before one of the Chamber bodies such as The Court of Honour, Conciliation Centre or Permanent Arbitration Court.

- Starting a conciliation procedure by trade unions on the basis of the Act on Fighting Discrimination which enters into force as of 1 January 2009.

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