

MEDIATION

for peaceful resolution of
labor disputes



MANUAL

for training equality representatives



MEDIATION

for peaceful resolution of labor disputes



With support from the European Union


Zveza Svobodnih Sindikatov Slovenije

Ljubljana, 2009



MEDIATION

FOR PEACEFUL RESOLUTION OF LABOR DISPUTES

MANUAL

FOR TRAINING EQUALITY REPRESENTATIVES

Prepared by: Lučka Böhm, Slovenian Association of Free Trade Unions



MEDIATION

for peaceful resolution of labor disputes



Editor: Lučka Böhm, Executive Secretary for Equal Opportunities, Slovenian Association of Free Trade Unions
July 2009

This manual was created in July 2009 as a result of the European project “**A MEDIATION MODEL: A Tool for Achieving Equal Opportunities on the Labor Market**” (<http://mediacija.zsss.si/sl>), which was jointly funded by the European Commission (budget item 04.03.03.02.) and the Slovenian Association of Free Trade Unions.



Project partners:

Slovenian project developer: Slovenian Association of Free Trade Unions, ZSSS (www.zsss.si),

International partners:

Austria: Österreichischer Gewerkschaftsbund, ÖGB (<http://www.oegb.at/>),

Great Britain: Transport Salaried Staff's Association, TSSA (<http://www.tssa.org.uk/>),

Croatia: Savez samostalnih sindikata Hrvatske, SSSH (<http://www.sssh.hr/>).

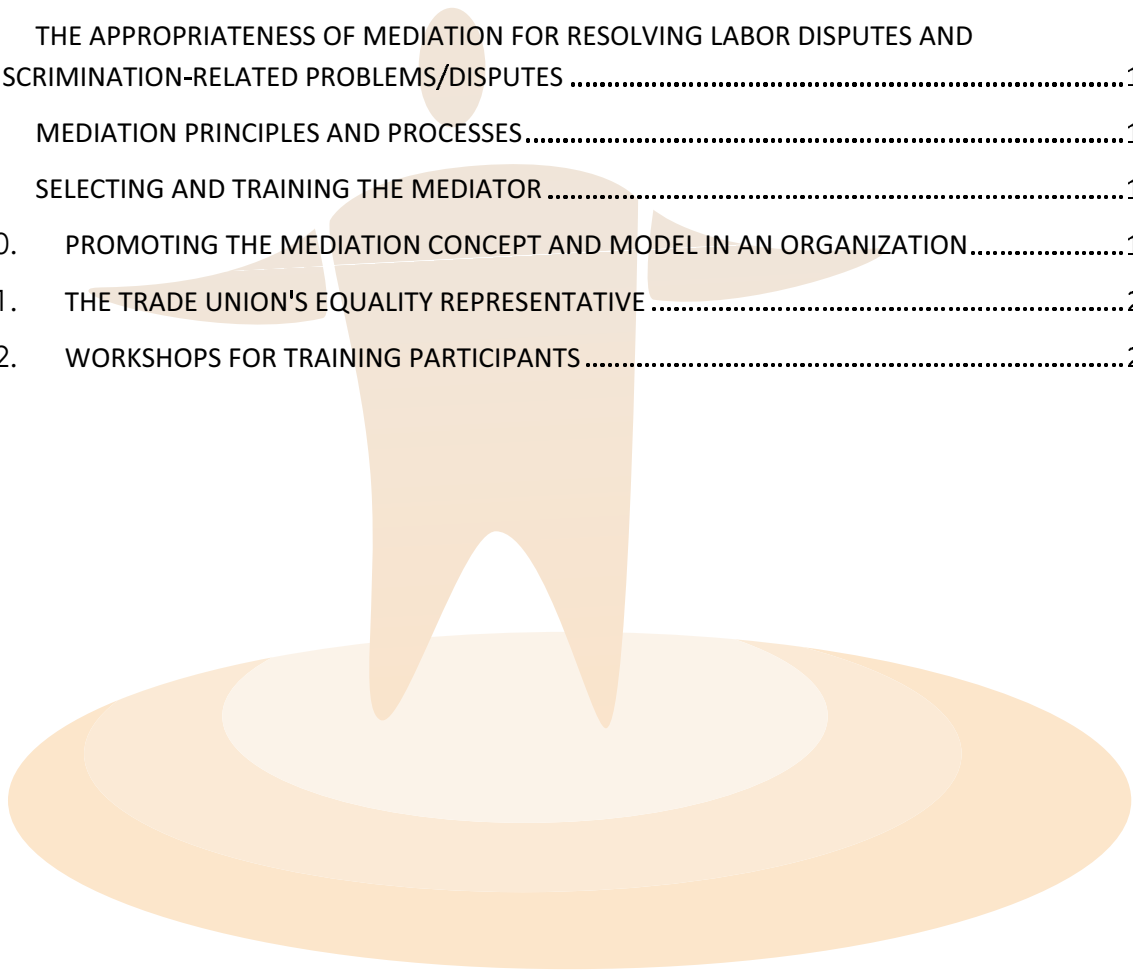


The content of this manual is the sole responsibility of the editor and in no way reflects the position of the European Union.



TABLE OF CONTENTS:

1. WHAT IS MEDIATION?.....	7
2. ADVANTAGES OF MEDIATION: PEACEFUL AND QUICK RESOLUTION OF PROBLEMS/DISPUTES, CREATING A BETTER WORK ENVIRONMENT	8
3. MEDIATION OR PEACEFUL RESOLUTION OF DISPUTES IN SLOVENIAN LABOR LAW	8
4. ARE SLOVENIAN COMPANIES ALREADY FAMILIAR WITH MEDIATION?	9
5. EXAMPLES OF DISCRIMINATION-RELATED PROBLEMS/DISPUTES AND THEIR RESOLUTION	10
6. OVERVIEW OF CURRENT METHODS OF RESOLVING DISPUTES IN SLOVENIAN COMPANIES	11
7. THE APPROPRIATENESS OF MEDIATION FOR RESOLVING LABOR DISPUTES AND DISCRIMINATION-RELATED PROBLEMS/DISPUTES	13
8. MEDIATION PRINCIPLES AND PROCESSES	15
9. SELECTING AND TRAINING THE MEDIATOR	18
10. PROMOTING THE MEDIATION CONCEPT AND MODEL IN AN ORGANIZATION	19
11. THE TRADE UNION'S EQUALITY REPRESENTATIVE	21
12. WORKSHOPS FOR TRAINING PARTICIPANTS	24





FOREWORD:

The main function of this manual is to achieve the goals specified in policy documents on equal opportunities issued by the European Commission and the Slovenian Association of Free Trade Unions in practice (i.e., at the level of individual employers). It has been prepared for use in Slovenia, but it can be easily adapted for application in other EU member and candidate states.

★ **Commission Communication to the Council, the European Parliament, the European Economic and Social Committee, and the Committee of the Regions, COM(2006) 92, Brussels, 1 March 2006**

A Roadmap to Equality between Women and Men (2006–2010), quotes:

“This Roadmap outlines six priority areas for EU action on gender equality for the period 2006–2010: equal economic independence for women and men; reconciliation of private and professional life; equal representation in decision-making; eradication of all forms of gender-based violence; elimination of gender stereotypes; promotion of gender equality in external and development policies.”

“Many women have attained the highest levels of education, entered the labour market and become important players in public life. Nevertheless, inequalities remain and may widen, as increased global economic competition requires a more flexible and mobile labour force. This can impact more on women, who are often obliged to choose between having children or a career.”

“Progress made by women, including in key areas for the Lisbon Strategy such as education and research, are not fully reflected in women's position on the labour market. This is a waste of human capital that the EU cannot afford.”

★ **The Equality Plan of the Slovenian Association of Free Trade Unions (ZSSS) for 2007–2011: resolution of the 5th ZSSS Congress, 7 December 2007**

Defining the trade unions' policy on equal opportunities, quote:

“The trade unions constituting the ZSSS hereby inform employees that we are a labor organization that will enforce the equal-opportunity principles in all employee categories in both the labor market and our own trade organizations. Discrimination is a source of social, financial, and legal inequality. We oppose direct and indirect discrimination based on nationality, race or ethnic origin, gender, parenthood or family obligations, disability, religion or beliefs, age, sexual orientation, or any other personal circumstance that hinders an individual in the realization of fundamental freedoms.”

“We will work towards ensuring every employee equal access to education, professions, employment and professional promotion, and social protection. We will dedicate special care to more vulnerable categories of employees. We will adjust the organization of the trade unions allowing various employee categories (e.g., women, temporary employees, young people, the disabled, immigrants, and others) to pursue their specific interests.”



MEDIATION

for peaceful resolution of labor disputes

INTRODUCTION

With this training guide for equality representatives the Slovenian Association of Free Trade Unions (ZSSS) is implementing the resolution adopted at its 5th Congress entitled The ZSSS Equality Plan 2007–2011. Training new equal-opportunity specialists among the trade union representatives will take place in parallel with the project of establishing a new ZSSS Labor Dispute Mediation Center. This project will be carried out from 2009 to 2010 by the ZSSS Legal Service in cooperation with the Slovenian Association of Mediators. Both projects are decisive for the introduction of a new standardized service for trade union members: mediation as a form of peaceful resolution of labor disputes.

This activity puts the 2004 initiative of the ZSSS Equal-Opportunity Committee into effect. At that time, the committee (i.e., the advisory body of the ZSSS leadership dealing with equal-opportunity issues) established that in seeking assistance in resolving a number of problems or disputes connected with unequal opportunities or discrimination at workplace, employees often turn to specialized NGOs because they wish to resolve these issues without further escalating the dispute. This drew attention to the fact that the range of services available to trade union members should also include a professional service for peaceful resolution of labor disputes.

Trade union representatives, who are typically characterized by excellent communication skills and a highly developed sense of fairness and human dignity, have been providing informal assistance in peaceful resolution of disputes since the very beginning. From its establishment in 1990, the ZSSS has offered legal consultation and representation in labor and social disputes in labor and social courts. Through its regional network of promotion centers supported by qualified professionals, the planned ZSSS Labor and Social Dispute Mediation Center will be an important new additional service for trade union members. The planned ZSSS Mediation Center will pursue the set goals by working together with a network of employer trade union representatives that will recommend an external mediator in any labor disputes that they are not able to resolve in their own informal way or through an internal mediator.

Employers are advised to appoint a trade union equality representative as a trustworthy person authorized for resolving disputes among the employees. This will undoubtedly be a trustworthy person to whom employees will turn for assistance without fear in (generally undisclosed) labor disputes due to unequal opportunities, and who will promote mediation with the employer and act preventively in general. This manual should aid them in training for this role.

In Slovenia as elsewhere it is being increasingly recognized that (especially undisclosed) labor disputes are often connected with unequal opportunities at the workplace in particular. The term “dispute” used in this manual refers not only to formal disputes, but also to the individuals’ hidden pressures connected with the organization of work that does not take into account their needs or discriminates against them. The consequences of these undisclosed disputes have a similar negative impact on employees and employers as disputes that have already broken out: stress,¹ lower

¹ On 23 April 2008, the Economic and Social Council approved the official translation of the Framework Agreement on Work-Related Stress, which the European social partners signed on 8 October 2004. The purpose of this agreement was to raise awareness about employees’ health risks



productivity, escape through sick leave, turnover, and consequently the employer's loss of trained professionals, and unnecessary career interruption for employees. It is clear that in both Slovenia and throughout the European Union, trade unions and employer organizations are becoming aware that it is in both the employers and employees' best interest to prevent these negative impacts.

In Slovenia, mediation has already been established as a method of resolving disputes amicably in various areas in the last few years; however, these areas have not included labor disputes. The ZSSS Mediation Center will thus represent a project of introducing mediation to resolving labor disputes in Slovenia, carried out in close cooperation with employer organizations.

In 2009, the European Commission financially supported the European ZSSS project "A Mediation Model: A Tool for Achieving Equal Opportunities on the Labor Market," which provided new knowledge on labor dispute mediation and consequently, this manual. By supporting this ZSSS project, the European Commission pursues the equal-opportunity goals (especially equal opportunities of women on the labor market) specified in its Roadmap for Equality between Women and Men, 2006–2010.² Mediation should thus become an effective tool especially for creating the conditions for real-life equal opportunities of women on the labor market and thus for eliminating direct and indirect discrimination.

I would like to thank the European Commission and the international trade unions that served as partners to this project and shared their work experiences.

Lučka Böhm, president of the ZSSS Equal-Opportunity Committee

caused by stress and to provide the employers and employees the framework for identifying and preventing or resolving work-related stress issues. This agreement defines stress as a condition characterized by physical, psychological, or social discomfort or dysfunctions arising from an individuals' feeling that they cannot achieve everything that is being demanded or expected from them. Individuals can easily deal with a short-term exposure to pressure, which can be even positive, but they find it more difficult to deal with a long-term exposure to severe pressure. Stress is not a disease, but a long-term exposure to it can reduce effectiveness at work and damage health.

² Commission Communication to the Council, the European Parliament, the European Economic and Social Committee, and the Committee of the Regions (A Roadmap to Equality between Women and Men 2006–2010, COM(2006) 92), Brussels, 1 March 2006, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2006&nu_doc=92



1. WHAT IS MEDIATION?

Mediation is a form of alternative dispute resolution³ and denotes a procedure in which parties voluntarily and with the assistance of a neutral third party (a mediator) try to amicably resolve a dispute, regardless whether the terms mediation, conciliation,⁴ appeasement, dispute intervention, or other similar terms are used for this procedure.⁵

☞ The mediator

The term “mediator” denotes any third party that has been asked to head mediation regardless of his or her title or profession and the manner in which he or she was appointed or requested to head mediation, and that agrees to the request.⁶ Mediation is an informal procedure to which no strict procedural rules apply (unlike court proceedings, or to a lesser extent also arbitration⁷ procedures at court); the procedure is based on a comprehensive resolution of a situation in dispute between the parties to the dispute, the mediator’s professionalism in heading the mediation process, and the respect of the basic principles of mediation, such as confidentiality, fairness, voluntariness, impartiality, and so on. In theory, in contrast to a conciliator, the mediator plays a more active role because he or she is allowed to present proposals and recommendations to the parties for resolving the dispute.

☞ The goal of mediation

The goal of mediation is that the parties to the mediation comprehensively resolve the relationship at issue and pursue their own interests and those of the opposing party to the greatest possible

³ The term “dispute” used in this manual refers not only to formal disputes, but also to individuals’ hidden pressures connected with the organization of work that does not take into account their needs or discriminates against them.

⁴ Conciliation or appeasement is a method in which the appeaser or conciliator as a neutral third party helps the parties to the dispute to amicably resolve their dispute connected with the rights, obligations or responsibilities arising from an employment contract. The conciliator tries to bring the parties closer in order to discuss different views, helps them negotiate, and encourages them to reach an agreement by mutual compromise. The conciliator does not actively participate in resolving the dispute. He or she is only expected to listen to the disputing parties, enable them to present their views, and establish what they disagree about. The conciliator’s main role is to assist the parties in negotiating and to achieve a settlement; his or her role is not to suggest a solution to the dispute.

⁵ This is how mediation is defined by Point A of Article 3 of the Mediation in Civil and Commercial Matters Act (*Official Gazette of the RS*, no. 56/2008, hereinafter: the ZMCGZ). Mediation is also defined in a similar way by Article 2 of the Rules on the Labor Dispute Mediation Procedure in Bank and Savings Bank Activities, which specify that mediation is a voluntary out-of-court or extra-arbitrary procedure of resolving disputes peacefully, in which the mediator helps the participants achieve an agreement resolving the dispute.

⁶ This definition of a mediator is provided in Point B of Article 3 of the ZMCGZ, whereas Article 2 of the Rules on the Labor Dispute Mediation Procedure in Bank and Savings Bank Activities stipulates that a mediator is a neutral professional that heads the mediation procedure in line with mediation principles; however, he or she does not rule on the dispute, but rather aids the participants in resolving the dispute.

⁷ Arbitration is a procedure in which a neutral third party rules on a dispute and his or her decision is based on legal grounds. Since 2008, the Arbitration Act (*Official Gazette of the RS*, no. 45/08, hereinafter: the ZArbit) has been governing arbitration procedures taking place in the Republic of Slovenia. Arbitration is a non-state tribunal composed of one or more persons (arbiters) whom the parties entrust, by agreement, with the issue of a decision on the merits, whose legal effects equalize it with a final court ruling. In principle, an arbitration award cannot be appealed in court on the basis of its content (except if it is in contravention with the public order of the Republic of Slovenia), but only if the procedure has not been correctly carried out (Article 40 of the ZArbit).



extent. This can be achieved through a discussion process, in which every participant has an equal opportunity to present the content of the dispute and problems, and listen to the other participant and his or her views of the relationship in dispute. The mediator aids the participants highlight the key points of the relationship at issue and their valid interests, and reach a mutually satisfactory agreement together with them. If the participants successfully conclude the mediation by reaching an agreement, they experience this procedure as their personal accomplishment and an achievement. Mediation also encourages people to realize that they are capable of handling their relationships with other people on their own and also instills this spirit in them.

2. ADVANTAGES OF MEDIATION: PEACEFUL AND QUICK RESOLUTION OF PROBLEMS/DISPUTES, CREATING A BETTER WORK ENVIRONMENT

The advantages of mediation are the following: it resolves problems quickly, effectively, and without delays, it handles the relationship at issue comprehensively and ensures a permanent dispute resolution, it has a positive outcome in line with the “win – win” principle (i.e., in successful mediation, every party to the dispute is a winner), and it improves the communication and dialogue culture between the parties.

☞ Parties to the mediation

In mediation, participants follow the basic principles – that is, all of the ethical and moral values that strengthen good relationships between the parties. The parties seek solutions to the dispute alone, whereby they inform one another of the problems that have caused the dispute. They maintain or even establish a better interpersonal relationship. Nonetheless, they reserve the right to judicial protection if the dispute is not successfully resolved. This procedure is also less expensive than any other methods of settling disputes.

3. MEDIATION OR PEACEFUL RESOLUTION OF DISPUTES IN SLOVENIAN LABOR LAW

To uphold the permanency, confidentiality and loyalty of the relationships it governs, labor law is in especially great need of peaceful dispute resolution. This applies to both individual and collective contracts, in which it is imperative to resolve disputes peacefully due to the characteristics of the parties, the contents of the relationships, and the type of disputes arising from these relationships. This training manual focuses on resolving individual labor disputes only. Slovenian labor law does not recognize the concept of mediation, but instead uses other terms when referring to various forms of peaceful resolution of disputes (e.g., peaceful dispute resolution, negotiations, settlement procedure, settlement, intervention, court settlement, agreement, and arbitration).

☞ Legislation

The Employment Relationships Act⁸ (hereinafter: the ZDR) covers the concept of arbitration for settling disputes between the employer and employee (for example in Articles 85, 205, 227, and 228), but it also refers to “agreement” (for example in the second paragraph of Article 85 and in Article 205). In the part that deals with the enforcement and protection of rights, obligations, and

⁸ Official Gazette of the RS, nos. 42/02, 103/07.



responsibilities arising from employment relationships, it stipulates that the employer and the employee resolve the dispute using every possible means of peaceful dispute resolution, which also implies mediation. During the term of employment, employees can demand that the employer fulfill an obligation or remedy the infringement of rights arising from the employment relationship if they believe that the obligation has not been fulfilled or their rights have been infringed upon (the first paragraph of Article 204 of the ZDR). This part of the procedure represents a procedural *sine qua non* for proceedings before the labor court, which the drafters of the bill understood as a way of peacefully resolving disputes between the employee and the employer.

The case law of the Supreme Court of the Republic of Slovenia has adopted the position that employees can file an action with the labor court only if the employer does not grant their request within eight days. With this, an important position has been adopted – that is, that the parties must first try to settle the dispute peacefully were the employment relationship between them to continue to exist. Such an obligation does not apply to disputes over unlawful termination of employment contracts and disciplinary action, and disputes over the employees' pecuniary loss; however, it does apply to disputes over employees' rights that do not take the form of damages from pecuniary losses (e.g., those connected with annual leave, the organization of working hours, the right to education and promotion, and especially disputes connected with the right to the protection of employees' privacy, personality, and dignity, including the right to equal treatment regardless of any personal circumstances).⁹

4. ARE SLOVENIAN COMPANIES ALREADY FAMILIAR WITH MEDIATION?

☞ Research

In 2008 and 2009, the ZSSS¹⁰ conducted a study on the methods of resolving workplace disputes, as reported by the employees, trade union representatives, and the management (ZSSS study). It was established that the majority of respondents had been familiarized with the concept and practice of mediation. They defined mediation correctly by listing its three main features: (1) peaceful resolution of disputes, (2) seeking a compromise solution, satisfactory to both parties to the issue, and (3) procedure in which the intervention of a third party or mediator plays an important role. The respondents showed a positive attitude towards mediation as a method of resolving organizational problems. The main points supporting mediation include the following: fast procedure and resolution (compared to time-consuming court proceedings), positive experiences within organization or private life to date, the high probability that mediation will have a positive impact on job satisfaction, and seeing mediation as a way out of a no-communication situation.

⁹ The recommendation to use alternative methods of resolving disputes is also included in the Employment-Related Industrial Property Rights Act (*Official Gazette of the RS*, nos. 45/95, 96/02, 7/03, 139/06, and 15/07, hereinafter: the ZPILDR), which in Chapter IV (Articles 24–31) specifies a special settlement procedure. If this procedure concludes with an agreement, this agreement is regarded as an enforcement title (fifth paragraph of Article 29). It is important that the settlement procedure is a procedural precondition for a labor dispute in court (Article 32).

¹⁰ The research team of the ZSSS EU project "A Mediation Model: A Tool for Achieving Equal Opportunities on the Labor Market" in 2008 and 2009 consisted of the following members: Aleksandra Kanjuo Mrčela (associate professor, University of Ljubljana's Faculty of Social Sciences), Andrej Razdrih (mediator and member of the Executive Board of the Slovenian Association of Mediators), Nevenka Černigoj Sadar, PhD (full professor, University of Ljubljana's Faculty of Social Sciences), Gabi Čačinovič Vogrinčič, PhD (full professor, University of Ljubljana's Faculty of Social Work), and Barbara Rajgelj, PhD (assistant professor, University of Ljubljana's Faculty of Social Sciences).



5. EXAMPLES OF DISCRIMINATION-RELATED PROBLEMS/DISPUTES AND THEIR RESOLUTION¹¹

Example of a dispute/problem connected with discrimination/unequal opportunities	Inappropriate response/resolution method	What can help eliminate the problem/dispute?	What can the trade union do?
Gender-based salary differences	This problem is not addressed because there is no official information and the victims often believe these differences occur for nondiscriminatory reasons beyond anyone's control; Victims believe they are not entitled to this information; Victims believe the salary differences reflect poorer quality of their work.	Informedness of all participants; Transparency of recruitment, remuneration, and promotion criteria and procedures; The organization's decision to address and eliminate the problem.	Provide information about reasons for and forms of gender-based discrimination; Work together with the employer in planning and implementing projects aimed at eliminating payment discrepancies; Propose that the employer monitor the structure of salaries by gender.
Impossible to reconcile work and family life (especially reconciling working hours with the employee's family responsibilities)	Employees see the issue as their personal problem, for which they must take responsibility and find answers on their own.	Flexible work organization (time and place); Understanding environment/management	Develop programs/projects to facilitate the reconciling of work and family life together with the employer (e.g., acquiring a "Family-Friendly Company" certificate); Promote "soft solutions" (e.g., reaching agreements within work teams on resolving problems/tensions, and on how to make work easier, etc.).
Discrimination based on gender or sexual orientation in recruitment and promotion or sexual harassment or discrimination based on age, ethnicity, religion, sexual orientation, and work status	Victims do not speak up because they are afraid of being singled out or misunderstood by the environment; they back down, stop communicating, or leave the organization; The harasser continues his or her inappropriate behavior.	Raising the awareness about the rights to equal treatment, the legislation and relevant procedures; Creating nondiscriminatory and safe organizational environment that respects diversity.	Raise awareness about the presence of discrimination and provide advice in cases of discrimination; Promote education about discrimination and ways of eliminating it; Propose new organizational roles (e.g., an equality representative: a person that provides information and support to employees, listens to them, and serves as a mediator if needed) or documents (e.g., a charter on organizational values).



6. OVERVIEW OF CURRENT METHODS OF RESOLVING DISPUTES IN SLOVENIAN COMPANIES

The ZSSS study showed that companies differ greatly in terms of methods used for resolving disputes and familiarization with possible/existing methods. The majority resolves disputes through a routine protocol: within work groups, through the intervention of the superior staff and the representatives of the works council and the trade union, and typically in cooperation with the human resources/legal department. The ZSSS study also showed that current problems are less openly discussed in public than in private organizations. The majority of disputes are resolved within organizations themselves. It is only in hierarchically rigid work environments that most of the labor disputes are dealt with in court.

☞ A few examples of various ways of resolving disputes recorded by the ZSSS study:

- Routine protocol for disputes that cannot be resolved by those directly involved in them, in the form of work teams that include the trade union or the representatives of the works council. In more complex cases, the works council chair, the trade union president, the human resources department, and the unit's management meet to address the issue;
- Though there is a formal tripartite committee that deals with settling disputes in place in the organization, the employees are not familiar with it;
- The majority of disputes is resolved in the organization and court disputes only arise in cases of injuries at work, reassignments, and termination of employment;
- Disputes in connection with poor working conditions, burnout, or the lack of funds do not get resolved or are resolved through negotiations among the management, who decides on the work method and the use of funds;
- Despite complaints filed with the management, disputes connected with discrimination and mobbing at work are not being resolved. The management has decided to wait for the offender to retire rather than deal with these disputes;
- The existing and well-known procedures for processing complaints regarding sex discrimination are only rarely used. There are several reasons for this: underestimating the problem, inappropriate organizational environments, and inadequate skills of both the victims and their superiors to articulate and communicate problems;
- Many problems connected with discrimination based on sex or other personal characteristics (e.g., age, ethnicity, or sexual orientation) do not develop into a dispute because the victims of discrimination do not speak up because they believe that addressing the problem publicly would not bring a solution or would even escalate the situation. In such cases, victims resolve the problem by backing down (i.e., they suppress the dispute, avoid the situations/persons that are causing the problem, they are increasingly absent from work, or even leave the organization). They do this because they feel helpless and that they are not provided sufficient support.



- Employees that have problems reconciling their work and family life do not consider this to be the result of deficient work organization, but their personal problem and therefore do not seek organizational support or assistance;¹²
- In some cases, problems escalate into disputes within the organization: between employees, employees and the management, or with clients. Communication at work becomes tense and the environment becomes unpleasant and inappropriate to work in for both the parties to the dispute as well as other members of the organization. The increasing problems are resolved through law suits and time-consuming court proceedings and may also be discussed in the media;¹³
- One organization that dealt with blocked communication made a successful use of assistance provided by external experts for settling disputes;
- Problems connected with absenteeism, reduced performance, and organizational disputes can have negative effects on the organization, such as poorer business performance, material costs and other expenses caused by court proceedings¹⁴ (e.g., compromised public reputation);

¹² Such conduct can have a number of negative effects on the victim and the work environment. Problems that are not resolved can result in frustration, stress, and poor employee performance. Appropriate employee support can help resolve the problem. Employees should be provided appropriate information (e.g., intranet information, thematic information leaflets, trade union or management representatives that would be willing to convey information to them, etc.) the opportunity to talk to and consult a trustworthy person (e.g., an elected employee steward, a management representative in charge of equal-opportunity issues or any other person) that could propose a mediation procedure be initiated to resolve the dispute/problem if necessary.

¹³ In cases like these, it would be advisable to create an environment characterized by open and respectful communication, availability of information, and the presence of mechanisms for resolving tensions, problems, and disputes. An important prerequisite of an organizational culture based on trust is defining and adopting joint norms and values. To this end, the organization must explore the possibility of adopting binding documents that would explicitly specify what values form the unanimously adopted (e.g., at the workers' assembly) basis of the organizational culture (e.g., respect for diversity, equality of everyone in the organization regardless of their personal circumstances, absence of any form of discrimination, etc.). It is very important that everything that is adopted is also known and acceptable to and also respected by everyone. To this end, it is necessary to constantly draw attention to the existence of adopted values (e.g., through activities connected with achieving goals linked to these values, such as reducing gender-based differences in salaries, and actions facilitating reconciling work and family, and by reporting on the results of these activities; by presenting organizational values when introducing new employees to the organization). Clear messages raise the employees' awareness and reduce possible occurrence of problems or disputes connected with gender-based discrimination (or discrimination on the grounds of other personal circumstances) due to the lack of knowledge and information. The jointly adopted norms oblige the management to create conditions and develop rules, mechanisms, and procedures that will make it possible to pursue the adopted values. In this, the trade union can serve as an active partner to the management and can launch initiatives and help create solutions.

¹⁴ In this, the trade union can play an important role by implementing its basic mission (i.e., the protection of employees' interests) in a new way – that is, through activities aimed at changing the organizational culture. A period of economic crisis can clearly additionally aggravate the problems connected with discrimination and inappropriate ways of handling them (in a period of increasing unemployment, employees will be even less willing to expose themselves). The organization's management should be interested in creating an appropriate organizational culture that will prevent these problems or develop mechanisms that will resolve them most suitably. Therefore, it is that much more important that organizations create a culture of trust as an appropriate framework of peaceful resolution of problems and disputes based on the principles of equality.



- Workplace abuse/chicanery/mobbing¹⁵ can develop from an unresolved dispute in an organization that allows and thus reinforces such behavior. Mobbing occurs more often where the organization of work is poor, one that is characterized by vague work instructions and authorizations, poor familiarization with the rules and goals, poor communication, mutual lack of trust, and denial of disputes. The offenders can include both the superior and subordinate staff, and, surprisingly enough, even coworkers.¹⁶ This has to do with systematically repeated and long-lasting poor treatment of individuals and the creation of hostile work environment. One-off occurrences are not considered systematic abuse, but can develop into it if the dispute is not resolved in time by eliminating its true reasons in the organization of work. Mobbing is manifested in a number of ways: as threats, constant criticism, social isolation (prohibiting others to socialize with the victim), slander, scoffing, assigning the victim too great or too small a workload, assigning the victims tasks that do not make sense, sabotaging the victim's work, sexual harassment as a form of domination, denying someone's dignity, and so on. Mobbing causes serious social, psychological, and physical health problems.¹⁷ It usually leads to long-term sick leave. The damage caused to one's health can be irreparable.¹⁸ Mobbing can even result in death (e.g., heart attacks, suicides, etc.).

7. THE APPROPRIATENESS OF MEDIATION FOR RESOLVING LABOR DISPUTES AND DISCRIMINATION-RELATED PROBLEMS/DISPUTES

☞ Using mediation

- Mediation can be used for disputes between coworkers at the same hierarchic level and even for disputes between employees and their superiors. In exceptional cases, it can also be used for resolving disputes between work groups or trade unions or employees on the one hand, and management on the other. The 2008/2009 ZSSS survey showed that in some Slovenian organizations, cases have been observed in which superiors have served as successful informal mediators in resolving disputes between employees and customers.

¹⁵ Using an EU-recognized questionnaire and the method of personal interviews, the Ljubljana Institute of Occupational, Traffic, and Sports Medicine conducted the first nation-wide survey on workplace mobbing in 2008. The survey included 823 respondents. 10.4% of respondents reported that they were at least occasionally exposed to workplace mobbing in the last six months before the study, and 1.5% reported that they experienced mobbing daily or several times a week. 18.8% of respondents confirmed that they witnessed workplace mobbing and 19.4% of all respondents reported that they had experienced workplace mobbing in the last five years.

¹⁶ The international term "mobbing" originally refers to a group that intimidates an individual. Of course it is also possible for only one person to perpetrate mobbing in order to control a coworker. Studies show that mobbing and sabotage is a frequent method of discrediting a competent coworker. The resulting lower performance is definitely not in the employer's or the company owner's best interest, who should (on the initiative of the trade union's equality representative) thus issue a statement outlining that such behavior will not be tolerated. These kinds of statements are already practiced by employers in many European countries.

¹⁷ In the Framework Agreement on Work-Related Stress, European social partners acknowledge that workplace harassment and violence are possible stress factors or that they cause work-related stress. Long-term exposure to stress can result in severe and even permanent health damage.

¹⁸ In some European countries, high damages case law is already in place in cases of extreme abuse, in which victims suffer health damage or material damage in the form of reduced income and thus lower expected pensions. The court has decided that the employer must pay the damages because it failed to protect the employee despite its legal obligation to provide its employees with a safe work environment.



- Mediation can be used at any stage of a dispute, but it should be used as soon as possible, before the dispute escalates, or even as a way of preventing a dispute.
- Mediation can also be used after the dispute has already been formally resolved in order to reestablish appropriate interpersonal relations between the parties to the dispute. In some organizations, mediation is provided as part of disciplinary and grievance procedures. It can be used in cases in which we wish to establish appropriate relations between coworkers after a completed disciplinary procedure.
- Mediation is appropriate for resolving various disputes, such as in interpersonal relations that have broken down, incorrect interpretations of verbal and behavioral messages, personal conflicts, communication problems, harassment, and chicanery. It may happen that certain behavior is perceived as discriminatory, harassing, or disrespectful, although that was not its intent. In this case, mediation can help the persons involved see how other people perceive their behavior and how it affects their coworker. Of course this is only possible if such behavior stops after mediation is carried out. Otherwise the mediator must suggest other forms of resolving the problem/dispute. However, due to the confidentiality of the mediation procedure, the mediator must not reveal the attempts already made and past experiences to a third person.¹⁹
- Mediation is also appropriate when the manager's intervention might become biased or his or her position does not allow the dispute to be appropriately resolved, and of course when the manager does not have sufficient skills to handle disputes or others' intense emotions.
- Mediation is especially appropriate in dealing with diversity²⁰ because it can help improve interpersonal relations and establish the optimal conditions for career development and promotion of job performance.

In order to use mediation successfully, ongoing evaluation of its effects is necessary both from the viewpoint of the organization and the aggrieved participants. A precondition for success is that the employees, managers, and trade union representatives be aware that mediation is merely one of the available options for settling disputes. Trade unions can play an important role if they lend the mediation process credibility and establish trust among employees.

¹⁹ It must be emphasized that in severe harassment cases and clear cases of discrimination and the violation of employees' mandatory rights, it is better to use formal procedures of resolving problems/disputes instead of mediation.

²⁰ The definition of "diversity" seeks to encompass all the ways in which people differ from one another: by sex, race, age, sexual orientation, looks, parenthood, physical and mental abilities, ethnicity, culture, language, religion, social origin, social class, and so on. These differences render every person unique and irreplaceable. If these differences are taken into account, people can also realize their abilities and skills at the workplace. Discrimination implies a violation of the principle of equal treatment on the grounds of negatively differentiating between people based on their personal circumstances, placing people in an unequal position. Discrimination is illegal; it is destructive and causes disputes. Diversity management in an organization refers to consistent implementation of the equal-opportunity principle in human resources management; it has a beneficial effect on the relationships and teamwork. Through this, the company's competitive edge is enhanced.



MEDIATION

for peaceful resolution of labor disputes

☞ WHEN IS MEDIATION NOT AN APPROPRIATE METHOD OF RESOLVING LABOR DISPUTES?

The advantages of mediation must be appropriately accepted and evaluated by all those that will use it; appropriate staff, financial resources, and a timeframe must be provided for its implementation in practice. It is definitely inappropriate to use mediation as a substitute for appropriate communication in the organization or for the work and responsibilities of managers. In addition, mediation is also inappropriate when an aggrieved person that feels discriminated against and harassed demands thorough investigation or for the case to be addressed in court. Mediation cannot be used to quickly resolve sexual discrimination problems.

It would be entirely illegal to use mediation for concluding “voluntary agreements” between the employee and employer on waiving work-related rights specified in regulations and collective agreements.

8. MEDIATION PRINCIPLES AND PROCESSES

Principles:

- *Voluntariness,*
- *Equality and autonomy of participants, and impartiality of the mediator,*
- *Speed,*
- *Informality,*
- *Confidentiality.*

Process:

- Stages and course of mediation,
- Rules, procedures, and familiarization,
- Mediator: internal or external? Where to find one? Mediator training,
- Mediation costs.

A. Mediation principles

The legal basis governing mediation in Slovenia is the Mediation in Civil and Commercial Matters Act (ZMCGZ)²¹. It defines mediation as “a procedure in which parties voluntarily and with the assistance of a neutral third party (a mediator) try to amicably settle a dispute that arises or is connected with a contractual or other legal relationship, regardless whether the terms mediation, conciliation, appeasement, dispute intervention, or other similar terms are used for this procedure.”

²¹ Official Gazette of the RS, no. 56-2339/21 June 2008



This act also lays down the **general principles** of the mediation process:

- Voluntariness,
- Equal treatment of parties,
- Autonomy of parties,
- Confidentiality of procedure,
- Impartiality of the mediator.

The mediation process must create a space of trust, which means that the victims or aggrieved parties or parties to the dispute must perceive the procedure and the competent persons as trustworthy.

Mediation is a process in which equal and responsible partners help resolve the dispute; they have accepted the assistance of a mediator with trust and voluntarily in order to form an acceptable permanent solution to the dispute on the basis of their own ability to form a dialogue and cooperate. The responsibility for finding the right solution lies with the participants, whereas the mediator is responsible for the process; the process enhances the ability to form a dialogue and cooperate, as well as the responsibility to find a solution that is acceptable for everyone and secures victory to everyone involved in mediation. Mediation procedures have an emancipatory potential because they eliminate inequality. Only employees that are aware of their rights and thus empowered to suitably respond to all the violations of their rights at their company can become the proposers and subjects of a mediation process.

The principles of speed and informality allow solutions that help the participant avoid time-consuming bureaucratic procedures; they clear any misunderstanding and prevent disputes or find effective and fast solutions to a problem.²²

B. Labor dispute mediation process

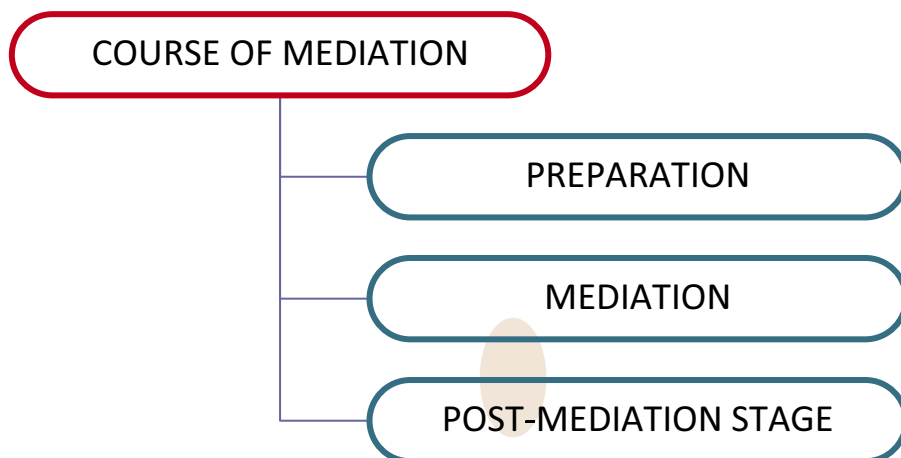
In introducing labor dispute mediation procedures, and in line with the professional theory, the following questions must be answered by an organization in advance:

- Who will perform the mediation?
- Will mediation include an internal or external mediator (or both)?
- Where can qualified external mediators be found?
- How can internal mediators be selected from among one's own coworkers (selection criteria and procedure)?
- What kind of training do mediators require?
- What kind of support and assistance will be provided to external mediators?
- How will the mediation service operate (if organized according to needs)?
- How can mediation be promoted, so that each employee or member of the organization is familiar with it?

²² E.g., through conversation that eliminates tension and enables cooperation to continue; a substitution/leave/absence plan that is in line with the organizational rules and at the same time ensures greater flexibility to parents that have young children or people with other caretaking obligations; or a workshop on stereotypes about gender and sexual orientation organized in the part of the organization in which such discrimination has been suspected or has actually occurred, etc.



Figure 1: The course of mediation can be divided into three stages



A) Initial formalities

- Initial complaint or mediation proposal;
- A trustworthy person appointed in advance,²³ another person in charge of the mediation procedure within the organization, or a third external person (outside the organization) talks to both parties in order to receive their consent for mediation;
- A mediator, either internal or external, is selected;
- Parties receive the mediator's notification informing them about the content of the mediation process, so that they know what to expect;
- The date of mediation is set by common agreement.

B) Mediation

- The mediator assumes his or her role and has preliminary separate meetings with both parties;
- The next meeting takes place with both parties, during which the mediator uses a structured procedure to lead the parties towards signing a jointly formed agreement²⁴;
- The date of the next meeting between the parties and the mediator is set by common agreement; at this meeting they review and verify the implementation of the agreement signed. With this meeting the role of mediator will have been completed.

C) After mediation

- The parties must follow the provisions of the agreement they have themselves developed;
- If new problems arise, new mediation or another method of resolving the issue is possible.

²³ In agreement with the employer, this could also be the trade union's equality representative. The autonomous Framework Agreement on Harassment and Violence at Work, signed on 26 April 2007 by the European Trade Union Confederation (ETUC), BUSINESSEUROPE, UEAPME, and CEEP, thus for example specifies that "Enterprises need to have a clear statement outlining that harassment and violence will not be tolerated. This statement will specify procedures to be followed where cases arise. Procedures can include an informal stage in which a person trusted by management and workers is available to give advice and assistance."

²⁴ The agreement can be notarized.



In addition to mediation, the work environment must provide all forms of trade union representation, legal assistance, and all the rights provided to the employees by law. The senior staff and managers must clearly express their commitment²⁵ to respect employee rights, and constructively resolve disputes. Mediation can be a good choice only if employees also have all other means of exercising their rights at their disposal. In the case of unsuccessful mediation, the aggrieved party has all other legal means at his or her disposal (especially the possibility of taking the matter to court).²⁶

☞ **THE SIX-STEP MEDIATION MODEL** provided by theory envisages a preliminary separate meeting between the mediator and each party. At the next, joint meeting, the following stages should be taken into account:

1. Presenting the purpose of mediation and defining the basic rules;
2. The parties describe the problem from their own perspectives, and the mediator sums up the basic circumstances;
3. Defining the core of the dispute and discussing the matter;
4. The mediator encourages mutual understanding between the parties, and controlling and verbalizing emotions, and establishes direct communication between them;
5. Listing useful ideas and proposals for the agreement;
6. Signing a mutually formed agreement.

These stages represent only a framework, which is as flexible and changeable as mediation itself; the mediator must follow the needs arising in the process of finding the right solution that takes place between the participants of mediation.

9. SELECTING AND TRAINING THE MEDIATOR

☞ **Internal or external mediator?**

In deciding whether to include an internal or external mediator, the argument in favor of internal mediators is their incorporation into the organizational environment, understanding of the context of the problem/dispute, and good knowledge of the organization and parties to the dispute. However, these advantages are also potential disadvantages because overly strong incorporation into the organization can compromise the required impartiality and non-involvement.

Exactly the opposite is true for external mediators: their objectivity and impartiality are their advantages, whereas their disadvantage is insufficient knowledge of the organization, its processes and culture, and dispute/problem circumstances.²⁷

²⁵ Methods of communicating with employees using clear messages.

²⁶ Here it is important that the mediation process interrupt the period of limitation for lodging a claim in court in line with Article 17 of the ZMCGZ.

²⁷ Innovative solutions are also possible. The ZSSS study found a Slovenian organization that appointed a retired employee as ombudsman (in the capacity of an internal mediator). Retired employees combine the advantages of internal and



The success of the mediation process depends largely on the mediator's ability to enable the parties to the dispute to form mutual solutions and support their efforts. To this end, mediators must have certain personality traits (e.g., highly developed empathy and emotional intelligence), skills (e.g., listening and understanding, and summarizing other people's thoughts), and expertise that they obtain through education and training. It is very important that mediators receive high-quality training,²⁸ in which the training and education program must be adapted to workplace mediation.

☞ **The key contents of basic labor-dispute mediator training include the following:**

- Basic principles and purpose of mediation,
- Mediator ethics and attitude,
- Stages of the mediation process,
- A tradition of settling disputes and mediation,
- Suitability of the case, and mediation structure and course,
- Communication and settlement skills and techniques,
- A sufficient number of role-playing and other practical exercises,
- Special features of mediation in labor disputes.

☞ **Mediators specially trained for handling mediation according to the specific nature of labor disputes are desired:**

- Alternative dispute resolution (general),
- Legal bases for alternative dispute resolution in Slovenia and the EU,
- Basic principles of the mediation process,
- Mediation process stages,
- Presentation of some basic techniques used by mediators.

10. PROMOTING THE MEDIATION CONCEPT AND MODEL IN AN ORGANIZATION

In order for the introduction of mediation as a form of resolving conflicts to be successful, it is vital that both the employer (management) and the employee agree with its introduction. The cooperation and support of the employer, who can support mediation procedures financially and by providing the time and place for mediation, is key to implementing mediation within the organization. In assessing the costs of mediation, the costs of promotion, organization, and implementation of mediation procedures must also be taken into account in addition to the costs of training mediators (and other active members in charge of mediation procedures in the organization). This assessment should also take into account the direct and indirect benefits (including the financial ones) of successfully carried out mediation procedures and the consensual method of resolving disputes and problems.

☞ **The costs of a conflict situation at the workplace**

external mediators: they know the organization well, but in their present role are probably sufficiently distant to possess the required independence and impartiality.

²⁸ Such as that offered by the Slovenian Association of Mediators (<http://www.slo-med.si/>), established in 2006 with the goal of spreading, developing, and practicing mediation and other methods of alternative dispute resolution in Slovenia. The association will train the first external mediators for the ZSSS Mediation Center.



The Austrian Trade Union Association (ÖGB) prepared a breakdown of the employer's costs due to mobbing at work. This breakdown convinces the Austrian employers to financially support mediation processes.²⁹

Total costs for an individual case of an abused employee (mobbing) that the employer must cover in the first year of dispute alone (data provided by the ÖGB):

NATURE OF COST	COST
Performance of the abused person is reduced by 40% (calculated on the basis of the typical salary of €1,500: $1500 \times 12 + 40\%$ additional costs)	€11,280.--
6 perpetrators spend 5% of their working hours mobbing the victim ($€1500 \times 12 \times 6 + 40\%$)	€8,460.--
Costs of the supervisor, HR-officer, the works council, and the physician (60 hours per €60)	€3,600.--
Additional work and/or overtime work to complete the work the victim has failed to complete because he or she was on sick leave (50 days per €120/day)	€6,000.--
Reduced motivation and performance, other types of absence from work, production errors, necessary additional training, compromised public profile due to the dispute, negative work atmosphere	€36,000.--
Costs of the physician, medications, therapy	€4.000.--
Use of service centers, travel and telephone expenses, etc.	€2.000.--
Total costs in the first year	€71,340.--

☞ The trade union plays a key role in:

- Promoting mediation as a method of resolving workplace disputes in companies in which it operates, among both employees and management;
- Proposing suitable inclusion of mediation in company bylaws;
- Providing suitably qualified internal and external mediators that will be available if both parties agree to resolve the dispute by means of a mediation procedure.

☞ Mediation in a work organization

In introducing the mediation mechanism and procedures with individual employers, a detailed presentation of the concept and model of mediation is necessary. It is important that everyone be well acquainted with the specifics of resolving disputes through mediation: a guarantee of

²⁹ In Austria, the ÖGB has already trained 1,800 internal mediators called "Konfliktlotse" or "Konfliktlotsin" (*der Lotse* 'pilot' – i.e., a pilot in settling disputes).



voluntariness, responsibility for a solution that is in the best interest of all the participants instead of assigning blame, safeguarding the confidentiality and dignity of all participants, sufficient time for learning, and the role of mediator. If this detailed presentation is attended by everyone, regardless of their status and job, this sends an important message about the openness of the model to all and the equality of everyone that decides to use this form of resolving disputes. It is best to organize the training for the management and employees together and make this a joint project. It is important that the concept of mediation be listed in the detailed presentation among other available forms of protecting employees' rights, so that they can decide on and select the forms of assistance that seem the most appropriate to them.

11. THE TRADE UNION'S EQUALITY REPRESENTATIVE

As a method of resolving labor disputes amicably, mediation will not come into its own without trade union equality representatives at the level of the company or organization. Experiences show that people usually elect coworkers with a developed sense of justice and human dignity that also possess highly developed communication skills as their trade union representatives. This is why coworkers generally accept their informal intervention in amicably resolving disputes between coworkers with trust. It seems natural that at the trade union's request addressed at the employer (i.e., management/owner), one of them becomes an equality representative as a trustworthy person authorized by the employer to whom employees turn in distress (especially in the case of "suppressed" labor disputes caused by discrimination³⁰ or problems reconciling work and family, and all other problems³¹ that Slovenian employees still consider their personal problems for which nobody will provide assistance).

The autonomous Framework Agreement on Harassment³² and Violence at Work³³ includes several valuable guidelines on how to manage labor disputes caused by violence and harassment.

³⁰ Employees organize themselves into a trade union because they are stronger this way than as single individuals. Together they more effectively protect individuals' rights. Any form of discrimination is unacceptable to the trade union. Tolerating one type of discrimination also opens the door to other types of discrimination. Discrimination allows those that engage in it to overtake others without achieving better work results. They also discriminate against the employees in order to pay them less for the same amount of work. Trade unions have always fought for the following principle: "The same payment for the same work!" Solidarity with those discriminated against has always been the goal of the employees in trade unions. For all these reasons, trade unions must be trained to identify all forms of discrimination.

³¹ A good trade union practice from the United Kingdom: the TSSA appoints representatives of vulnerable employee groups (i.e., women, immigrants, the disabled, ethnic minorities, etc.) as equality representatives in order to encourage these employees in particular to share their distress.

³² The term "harassment" also covers mobbing.

³³ It was signed on 26 April 2007 by the European social partners, including EKS, BUSINESSEUROPE, UEAPME, and CEEP. Slovenian social partners must implement it at the national and the employer's levels in the manner that corresponds to the tradition of Slovenian industrial relations between employers and trade unions. The fact that this autonomous European agreement on preventing harassment and violence was signed by three European employer organizations on behalf of the national employer organizations in all the EU member states shows that, throughout Europe, employers are aware that preventing harassment, violence, and discrimination based on this is not only in the employees', but also employer's best interest.



Quote: The goal of this agreement is to prevent, identify, and manage problems of harassment and violence. It draws attention to the fact that raising awareness and appropriate training of managers and workers can reduce the likelihood of harassment and violence at work. Enterprises need to have a clear statement outlining that harassment and violence will not be tolerated. This statement will specify procedures to be followed where cases arise. Procedures can include an informal stage in which a person trusted by management and workers is available to give advice and assistance. Pre-existing procedures may be suitable for dealing with harassment and violence.

A suitable procedure will be underpinned by but not confined to the following:

- *It is in the interest of all parties to proceed with the necessary discretion to protect the dignity and privacy of all*
- *No information should be disclosed to parties not involved in the case*
- *Complaints should be investigated and dealt with without undue delay*
- *All parties involved should get an impartial hearing and fair treatment*
- *Complaints should be backed up by detailed information*
- *False accusations should not be tolerated and may result in disciplinary action*
- *External assistance may help*

If it is established that harassment and violence has occurred, appropriate measures will be taken in relation to the perpetrator(s). This may include disciplinary action up to and including dismissal. The victim(s) will receive support and, if necessary, help with reintegration.

Employers, in consultation with workers and/or their representatives, will establish, review and monitor these procedures to ensure that they are effective both in preventing problems and dealing with issues as they arise.

☞ **The role of equality representatives includes the following:**

- Raising coworkers' and management's awareness about the destructiveness of discrimination and the advantages offered by diversity management;
- Raising awareness about the fact that employees' problems with reconciling work and family responsibilities (e.g., due to working hours that do not fit parental responsibilities), which may seem personal at first glance, are truly a joint organizational problem that can be resolved by agreement to everyone's satisfaction. These seemingly personal problems must be made visible in order to make clear that they are common to everyone and that they should be resolved by adjusting the work organization;
- Raising awareness about the damage caused to employees and employers by stress arising from unresolved suppressed disputes/problems at work;
- Promoting mediation as a way of amicably resolving disputes/problems connected with



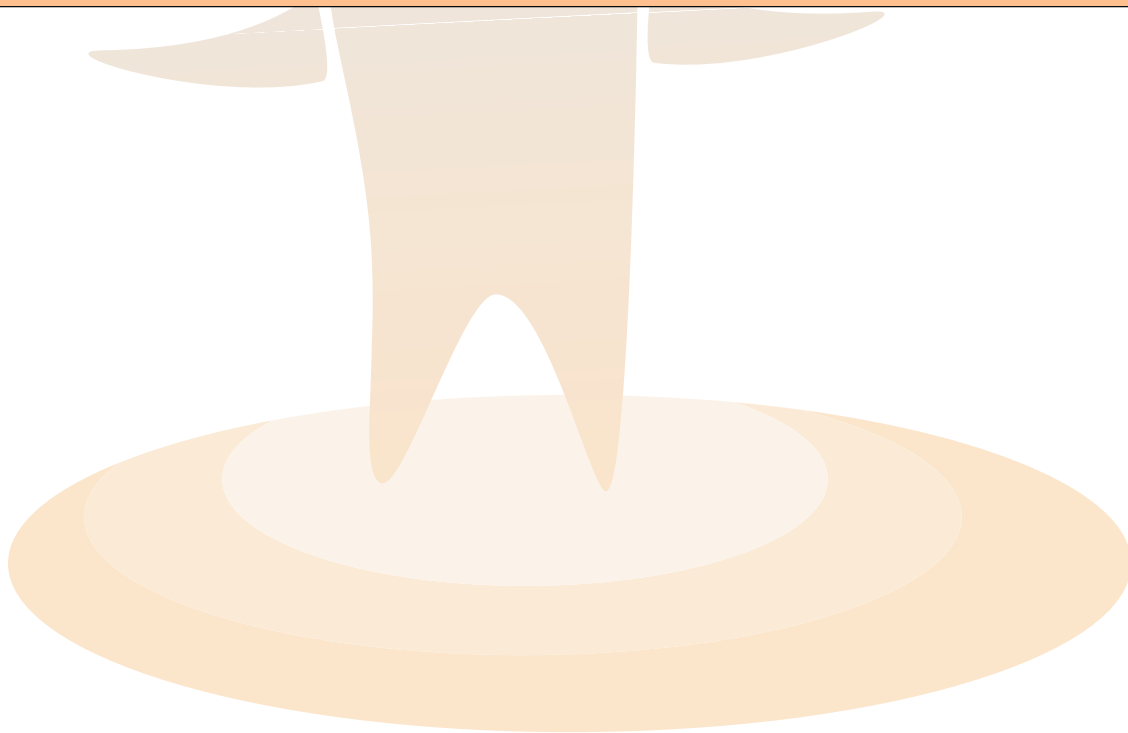
MEDIATION

for peaceful resolution of labor disputes

unequal opportunities;

- Presenting an initiative to the employer to adopt an employer's statement outlining that violence³⁴ and harassment/mobbing will not be tolerated, and the procedures for resolving these kinds of grievances, with which every employee and the management is made familiar;
- Establishing themselves as trustworthy persons to whom employees turn in confidence in distress arising from suppressed labor disputes or problems. Their role is to inform the employees of their rights and informally help them resolve the dispute. If they believe assistance of an external mediator is required, they suggest this to the employer, all the parties to the dispute, and the ZSSS Labor Dispute Mediation Center;
- Preventing similar disputes for organizational reasons based on the experience gained (e.g., informing employees of their rights in a timely fashion, presenting initiatives to the employer for taking organizational measures that can prevent disputes).

I wish you great success and satisfaction in your work!



³⁴ Including sexual harassment.



12. WORKSHOPS FOR TRAINING PARTICIPANTS

These workshops are intended for practical application of the expertise obtained in training.

A. Advance preparation before training

Participants complete the questionnaire by evaluating their own work environment (after consulting their coworkers):

- Frequency and types of labor disputes in their own company or organization?
- Who is most frequently involved in the dispute (e.g., women, immigrants, young parents, etc.)?
- Are there any “suppressed” labor disputes over unequal opportunities in which employees hide their problems because they regard them as personal and do not expect any assistance?
- What methods of resolving labor disputes are in place with the employer (informal, formal)? Who takes part in the resolution procedures?
- Participants use this information at workshop discussions.

B. Workshops

Participants are divided into groups that discuss the various tasks assigned and prepare their own solutions. Each group appoints a rapporteur, who presents the solution developed at the closing group discussion. All participants are invited to participate in the discussion on the reports.

At the closing session, participants assess the usefulness of the expertise gained.

☞ **Assignments to be tackled by work groups at the workshops:**

1. How to present and recommend mediation in labor disputes to coworkers and the employer.
 - How to promote mediation so that every employee/member of the organization will be familiar with it (see chapter 10).
 - What are the advantages of mediation compared to the more formal ways of settling disputes?
 - How to develop an initiative to be presented to the employer for adopting a statement outlining that discrimination, mobbing, and violence will not be tolerated.
 - Arguments that help them reach an agreement with the employer on covering the costs of external mediation.
2. Establish when mediation is an appropriate form of resolving disputes and when it is not. Add the reasons for disputes from your own company or organization to the list.
 - In the case of grievances regarding discrimination based on sex, race, age, sexual orientation, looks, parenthood, physical and mental abilities, ethnicity, culture, language, religion, social origin, social class, etc.;
 - For seeking solutions in reconciling work and family responsibilities;
 - Grievances regarding salary differences that do not result from an actual difference in the amount of work performed;
 - Grievances regarding unequal promotion opportunities;



MEDIATION

for peaceful resolution of labor disputes

- In improving interpersonal relations in order to achieve optimal career development and in encouraging job performance;
- If the manager does not have sufficient skills to manage disputes;
- As substitutes for appropriate communication in the organization or for the work and responsibilities of managers;
- In interpersonal relations that have broken down, incorrect interpretations of verbal and behavioral messages, personal conflicts, communication problems;
- In harassment and chicanery.
- When an aggrieved person that feels discriminated against and harassed demands thorough investigation or for the case to be addressed in court (e.g., sexual discrimination problems);
- To prevent disputes;
- To reestablish interpersonal relations after the disciplinary procedure has been concluded;
- To conclude “voluntary agreements” between the employee and employer on waiving work-related rights specified in regulations and collective agreements;
- Mediation in the case of crime, mandatory rights?

3. Organizational issues

- How severe must a dispute be to justify mediation?
- When does mediation make sense given the characteristics of the participants?
- Appropriateness of mediation in disputes with third parties (e.g., buyers, customers, and other persons)?
- Is mediation possible between groups of employees and not merely between individuals?
- How to select an internal mediator.
- When does a dispute require the assistance of an external mediator (e.g., the ZSSS Mediation Center)?
- When is a notarized mediation-based agreement required?
- How can the findings on the organizational reasons for individual disputes between coworkers be systematically used to prevent similar disputes in the future (e.g., presenting initiatives to the employer to introduce new organizational rules, communicate clear policy, etc.)?
- What to do if mediation is unsuccessful.



REFERENCES:

1. Reports of the research team participating in the ZSSS European project "A MEDIATION MODEL: A Tool for Achieving Equal Opportunities on the Labor Market" comprised of Aleksandra Kanjuo Mrčela (associate professor, University of Ljubljana's Faculty of Social Sciences), Andrej Razdrih (mediator and member of the Executive Board of the Slovenian Association of Mediators), Nevenka Černigoj Sadar, PhD (full professor, University of Ljubljana's Faculty of Social Sciences), Gabi Čačinovič Vogrinčič, PhD (full professor, University of Ljubljana's Faculty of Social Work), and Barbara Rajgelj, PhD (assistant professor, University of Ljubljana's Faculty of Social Sciences).
 - a) Mediations as a ways of achieving greater gender equality on the labor market (the final research report, 31 May 2009)
 - b) Mediation Guidelines: A Tool for Achieving Equal Opportunities on the Labor Market (19. June 2009)
2. ÖGB training material:
 - a) Aktiv gegen Mobbing!, ÖGB, 2008,
 - b) Das Beratungs-Gespräch, ÖGB-Verlag,
 - c) Mag. Dr. Andreas Olbrich-Baumann in Maga Ilse Reichart: Lehrgang Konfliktlotse/konfliktlotsin, Modul 1, 2009,
 - d) Mag. Dr. Andreas Olbrich-Baumann: Krise und Krisenintervention, Burnout, Psychohygiene, Stressverarbeitung, Modul 2, 2007
 - e) Mag. Dr. Andreas Olbrich-Baumann in Maga Ilse Reichart: Lehrgang Konfliktlotse/konfliktlotsin
3. Good practice of project partners; country reports:
 - a) Tanja Vicas, ÖGB: Mediation in Austria, 2008,
 - b) Irina Radaković, SSSH: Mediation in Croatia, 2008,
 - c) Val Stansfield, UK: Models of Workplace Dispute Resolution in the UK, 2008
4. Agreements concluded by the European social partners:
 - a) Framework Agreement on Harassment and Violence at Work, 26 April 2007, Brussels, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0686:FIN:SL:HTML>
 - b) Framework Agreement on Work-Related Stress, 8 October 2004, Brussels, official translation as adopted on 23 April 2008 at the 166th EES session,
 - c) Framework of Actions on Gender Equality, Brussels, 2005.
5. ZSSS documents on equal opportunities:
 - a) ZSSS Equality Plan 2007–2011, resolution of the 5th ZSSS Congress, 7 December 2007,
 - b) The ZSSS management Action Plan for Promoting and Creating Equal Opportunities for Men and Women, 20 April 2004.
6. Toš Zajšek Andreja. 2007. Vzorec dogovora o preprečevanju in odpravljanju posledic psihičnega nasilja/trpinčenja (mobbinga) v družbi... (A Sample Agreement on Preventing and Eliminating the Effects of Physical Violence/Abuse (Mobbing) in Society). Pravna služba ZSSS, paper at the conference held on 30 May 2007, SIC Radovljica.
7. Trpinčenje na delovnem mestu v Sloveniji (Workplace Mobbing in Slovenia). Abstract, survey of the Institute of Occupational, Traffic, and Sports Medicine, 2008.



8. Mobing, trpinčenje, šikaniranje ..., Nekaj usmeritev za pogum pri ohranjanju dostojanstva (Mobbing, Abuse, and Chicanery: A few Guidelines to Help You Maintain Your Dignity at Work). Pogum – društvo za dostojanstvo pri delu, Ljubljana, 2009.
9. Fourth European Working Conditions Survey, National Statistics for Slovenia, European Foundation for the Improvement of Living and Working Conditions, Dublin, 2005, <http://www.eurofound.europa.eu/pubdocs/2006/98/en/2/ef0698en.pdf>.
10. Diversity Management in Employment, Guidelines for Employers and Trade Unions, Ljubljana, 2009; publication of the PROGRESS project co-funded by the European Commission, in which the Student Cultural Center (ŠKUC), ZSSS, and the Slovenian Employers' Association (ZDS) participated.
11. Ukrepi proti diskriminaciji v zaposlovanju za sindikate, Priročnik (Actions against Employment Discrimination for Trade Unions: A Manual), Ljubljana, 2006; a manual as part of the "Partnership for Equality" program as part of the European EQUAL initiative (initiative for eliminating any kind of discrimination in employment), in the ŠKUC, ZSSS, and Slovenian Employers' Association (ZDS) participated as partners.

