

**ANSWERS TO THE QUESTIONNAIRE OF
FOURTH STUDY COMMISSION
2006**

Do we need special Labour Court procedures and alternative dispute methods

I - Are there new initiatives to make Labour Court hearings more efficient?

1. Are there any pre-trial procedures?

Answer: Yes, there are.

A. The mediation.

B. The arbitration.

A. The mediation.

According to the Labour Code the parties can have resort to mediation of a person who is out of the conflict for the sake of the settlement. The parties together call upon the mediator to participate. The mediator can ask for information to the necessary degree during the term of the mediation. The mediator has an obligation to set down the result of the mediation as well as the standpoints of the parties and give it them at the end of the process.

B. The arbitration.

According to the Labour Code the parties can settle the collective labour disputes by the assistance of the arbitrator as agreed. The arbitration procedure is obligatory, if the parties subjected themselves to this in a written statement.

The arbitrator can constitute a conciliatory commission to delegate the parties their representatives the same ratio. The process of the arbitrator is mandatory in many cases.

The agreement which is the result of the conciliation or the decision of the arbitrator is qualified as collective contractual treaty. Experts and witnesses can be resorted during the process of the conciliation, as well as the arbitration.

a. Are they mandatory?

Answer: No, these are only possibilities. The process of the arbitrator is mandatory only in the disputes which are regulated in the act.

b. In which way is the court involved?

Answer: The court can't be involved, because a person (mediator or arbitrator) who's independent from the court is involved by the parties and they can work together for the sake of the settlement.

c. How long may they go on?

Answer: Pre-trial proceedings take maximum 90 days.

d. Who has to bear legal cost?

Answer: The accountable and necessary costs for the pre-trial proceedings are born by employer, if there is no other agreement.

e. Which effect do they have on the time of prescription?

Answer: These proceedings interrupt the period of prescription.

2. Are there specific ideas to give assistance to the plaintiff to raise his claim more effectively?

Answer: Yes, there are theoretically, but in practice only with the help of legal staff (lawyers or solicitor).

3. What interest has to be paid for remunerations, which are not paid at the date of maturity?

Answer: In the case of default has to be paid the interest which is defined in Civil Code.

4. Are there procedural regulations for mediation?**a. Is mediation compulsory?**

Answer: It's not compulsory any more. Nevertheless the obligate conciliation was broken off, there is a possibility to ask for the help of a conciliatory. It can be determined in the collective contract, or the parties can agree with each other.

b. How are the mediators selected? In which way is the court involved? Are judges different from trial judges?

Answer: The National Council of Conciliation invite applications to get into the list of mediators. This list is kept by the Ministry of Justice.

The parties have more methods to choose the mediators:

- 1) Both the employer and the employees delete two names from the list so remain the person who is accepted by the parties.
- 2) Both of them order the names to the sequence of sympathy and choose the mediator or arbitrator according to the rank.
- 3) It's possible to combine the previous methods, e.g. they delete the names and after it rank the names which remained.

According to the present regulation the trial judges don't take part in the pre-trial proceedings, they can't be involved and the arbitrators aren't professional judges.

c. Is it confidential?

Answer: The proceedings are unopened because the mediator or the arbitrator has to work in strict confidence.

d. How long may mediation go on? How is it finished?

Answer: It may go on not more than 90 days and during this period has different parts.

Mediation proceedings are terminated by subscribe of the agreement, or on the day when one of the parties inform the other party, that regard the process as finished.

e. Who has to bear the legal cost?

Answer: According to a general rule the parties bear their own costs, but they share the costs of the mediator and the expert, except when there is an agreement with diverse matter.

f. Which effect does mediation has on the time of prescription?

Answer: The start of the mediation interrupt the period of prescription.

g. What training in law and procedure is given to mediators?

Answer: The mediators and arbitrators take part on a five-day basic training, and after finishing it get a diploma. There is a continuing education one or two times per year, where they can evaluate the finished mediations.

Taking part on the basic training is not a necessary condition to get into the list of mediators, but as they were chosen they have to fulfill the training in a year.

II - Collective (class) action.

1. What kind of collective actions have you got?

Answer: Our legal system doesn't know the collective actions, so there are no answers to the next four questions.

2. Who are the Parties of these procedures? ---

3. Which courts are competent? ---

4. Which effects has their decision? ---

5. To whom is this decision binding? ---

6. Is it possible for a works council or trade union to sue or request for ascertainment of rights or legal relations, if some employees are involved? Do they have to specify these employees?

Answer: According to the Labour Code a works council or trade union can be parties in a trial and bring an action, however they haven't lawsuit legal capacity on the grounds of the Code of Civil Procedure.

It isn't necessary to specify the employees.

7. Who has to bear the cost?

Answer: The Code of Civil Procedure orders the rule of bearing the cost.

The court passes a decision officially about the cost, except when the prevailing party asks for disregard to pass the decision in this topic.

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