C.E.D.R.

European Council for Agricultural Law
Comité Européen de Droit Rural (C.E.D.R.)
Europäisches Agrarrechtskomitee

XXIV. European Congress and Colloquium of Agricultural Law – Caserta (Naples) – 26-29 September 2007

XXIVe Congrès et Colloque Européens de Droit Rural – Caserta (Naples) – 26-29 septembre 2007

XXIV. Europäischer Agrarrechtskongress mit Kolloquium – Caserta (Neapel) – 26.-29. September 2007

Commission II

National Report – Rapport national – Landesbericht

Hongrie

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XXIV European Congress and Colloquium of Agricultural Law
Caserta (Naples) – 26-29 September 2007

Commission II

JURISDICTION AND ALTERNATIVE DISPUTE SETTLEMENT RESOLUTION IN AGRICULTURE

Hungarian National Report by

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1. **Set out briefly the principal Statutory provisions in your countra for Arbitration and whether the UNCITRAL model is followed (United Nations Commission on International Trade Law 1985). Are there any problems in practice in the operation of these rules in your country? I understand the following countries have not followed this model:- United Kingdom (Except Scotland where it has been adopted) The Netherlands, France and Switzerland)**

Principal Statutory provisions for Arbitration are governed by Act LXXI of 1994 on Arbitration according to the UNCITRAL model. The model is followed entirely.

-The Act - unless it provides otherwise - shall apply if the place (seat) of the "ad hoc" or institutional arbitral tribunal is in Hungary.

-In Sections 3 – 5 the stipulation for Arbitration and the procedure are laid down:

"Instead of court proceedings, arbitration may take place, if

a) at least one of the parties is a person dealing professionally with economic activity, and the legal dispute is in connection with this activity, furthermore

b) the parties may dispose freely of the subject-matter of the procedings, and

c) the arbitration was stipulated in an arbitration agreement.

(2) Arbitration may be stipulated also in the absence of the condition provided in subsection (1), paragraph a), if this is permitted by an Act."

-In section 6 the Waiver of the right to Objection is governed:

"A party who knows that any provision of this Act from which the parties may derogate or any requirement of the arbitration agreement has not been complied with and yet proceeds with the

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arbitration without stating his objection to such non-compliance immediately or, if a time-limit is provided therefore, within such period of time, shall be deemed to have waived his right to object."

-In Sections 7-8 the role of the courts is declared, i.e. no court shall intervene except where so provided in the Act.

-In Chapter II the composition of Arbitral Tribunal, the appointment of Arbitrators and substitute Arbitrators, the termination of mandate of arbitrators.

For example:

The following may not be arbitrators

a) those under 24 years of age;

b) those who have been barred from public affairs by a non-appealable court judgement;

c) those who have been non-appealably placed under curatorship by the court;

d) those who have been sentenced to imprisonment to be excecuted non-appealably, until they are dispensed from the disadvanteges attached to a criminal record.

"(1) An arbitrator may be challenged only if circumstances exist which give rise to justifiable doubts as to his indpendency or impartiality, or if he does not posses the necessary qualifications agreed to by the parties.

(2) A party may challenge an arbitrator appointed by it or in whose appointment it has participated only for reasons, on the basis of subsection (1), of which he becomes aware after the appointment has been made." Section 18

- In Sections 24-25 the ruling of the Arbitral Tribunal on its Own Jurisdiction as follows:

"(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For this purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

(2) A decision by the arbitral tribunal that the contract is null and void, shall not entail ipso jure the invalidity of the arbitration clause.

(3) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence, while the plea based on the excess of the jurisdiction of the arbitral tribunal shall be raised without delay when the alleged excess of the jurisdiction was made. The arbitral tribunal may admit a later plea as well, if it considers the delay justified.

(4) A party is not precluded from raising a plea concerning the jurisdiction of the arbitral tribunal by the fact that it has appointed, or participated in the appointment of, an arbitrator." Section 24

(1) The arbitral tribunal may rule on a plea referred to in Section 24 either when the plea is raised or in an award on the merits. If the arbitral tribunal rules that it has jurisdiction, any party may request the court specified in Section 51, within thirty days of receiving notice on that ruling, to decide on the jurisdiction of the arbitral tribunal.

(2) While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award." Section 25

-There are Sections dealing with:

a. equal treatment of parties
b. determination of rules of procedure
c. exclusion of publicity,
d. language of the proceedings,

e. place of arbitration,

"(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, while the institutional arbitral tribunal shall act at its seat specified in its deed of foundation.

(2) Notwithstanding the provision of subsection (1), the arbitral tribunal may - unless otherwise agreed by the parties - meet at any place for consultation among its members, for hearing the parties, witnesses or experts, as well as for inspection of objects and documents." Section 31

f. commencement of arbitral proceedings

g. statement of claim and reply

"(1) The claimant shall state its claim, the facts supporting it, the points at issue, within the period defined by the parties or by the arbitral tribunal, while the respondent shall state its defence relating thereto. The parties may also agree otherwise as to the required elements of such statements.

(2) The parties may submit, together with their statements, all the documents which they consider to be relevant, or may refer to any documents or other evidence which they wish to submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement its statement of claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal excludes the submission thereof due to the delay caused by this procedure.

(4) Where a provision of this Act, other than Section 35, subsection (1), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such a counter-claim." *Section 33*

h. oral hearing and written proceedings

"(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall hear the parties and give them the opportunity to submit their petitions. The arbitral tribunal shall hear the witnesses and experts present, but it cannot apply a fine or another means of coercion." Section 34

i. default of party

j. appointment of an expert

"*(1) Unless otherwise agreed by the parties if without showing sufficient cause the claimant fails to communicate its statement of claim, the arbitral tribunal shall terminate the proceedings." Section 35*

k. court assistance

l. making of award and termination of proceedings

"(1) Arbitral tribunals consisting of more than one arbitrator shall make their decisions, unless otherwise agreed by the parties, by a majority of votes. Failing majority, the presiding arbitrator shall decide.

(2) Questions of procedure may also be decided by the presiding arbitrator, if so authorized by the parties or by all members of the arbitral tribunal". Section 38

"(1) The arbitral proceedings are terminated by a final award passed on the merits of the case, or by an order of termination of the arbitral tribunal.

(2) The arbitral tribunal shall issue an order for the termination of the proceedings, if

a) the claimant fails to submit its stetement of claim [Section 35, subsection (1)];

b) the claimant withdraws its claim, unless the respondent objects thereto, and the arbitral tribunal recognizes the latter's legitimate interest in obtaining a final settlement of the dispute;

c) the parties agree on the termination of the proceedings;

d) the arbitral tribunal finds that the continuation of the proceedings has, for any other reason, become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the proceedings, except for the proceedings.“ Section 42

m. settlement
n. form and contents of award
o. correction, interpretation of award; additional award
p. international arbitral proceedings
q. procedure in international cases

“(1) In the course of international arbitral proceedings the provisions of Chapters I to V shall apply with the differences included in this Chapter.

(2) In case of international arbitration Section 8 and - in case of reciprocity - Section 37, subsection (1) shall also apply if the seat of an arbitral tribunal is outside of Hungary.

(3) In international cases - unless otherwise provided by law - the permanent arbitration court of the Hungarian Chamber of Commerce and Industry shall act as permanent arbitral tribunal.” Section 46

r. proceedings of the court
s. jurisdiction, competence

“Cases in connection with arbitral proceedings fall - with the exceptions regulated in Section 37 - within the jurisdiction of the county courts. Section 51

In matters in connection with arbitral proceedings, the competent county court is that which is located in the territory where the seat (place of business) of the respondent is to be found, or in the territory of which the contract resulting in the dispute was concluded. If the competent court may not be established in this way, the Metrpolitan Court shall act. Section 52

The court shall act - with the exception of the action for invalidating the arbitral award - in non-contentious procedure, without the co-operation of lay assessors. Against its decision, no appeal or review lies.” Section 53

t. setting aside of the award of an arbitral tribunal
u. recognition and enforcement of award of arbitral tribunal

“The effect of an award of an arbitral tribunal is the same as that of a non-appealable court judgement; the execution thereof is governed by the legal rules on execution by court. Section 58

The court shall refuse to execute the award of the arbitral tribunal, if, in its judgement

a) the subject-matter of the dispute is not subject to arbitration under Hungarian law, or

b) the award is contrary to the rules of Hungarian public order. Section 59

The party that makes a reference to an award of the arbitral tribunal, or applies for its enforcement, shall supply the original award or a certified copy thereof. If the award is not in the Hungarian language, the party shall also attach a certified Hungarian translation." Section 60

2. Set out the Statutory Tribbunals dealing with Rural Disoutes in your country. Are there any problems in practice in the operation of these rules in your country?

In Hungary,[4] only one form of alternative jurisdiction is working in the field of agriculture *strictu sensu*, the Arbitral Tribunal of the Hungarian Chamber of Agriculture. There is another arbitration working at the Chamber of Commerce, where a great number of cases deal with agriculture related questions, that is buying and selling of agricultural products, such as default in paying, default in delivery, problems in connection with the warranty, etc. It could be a problem to determine what is the subject of agriculture[5] and agricultural arbitration, nevertheless the arbitratory jurisdiction managed so far to act without interfering into each other's competence; the great number of cases arriving at the Arbitral Tribunal of the Chamber of Commerce have as a reason that e.g. abroad it is not well-known that there exists an Arbitral Tribunal of the Hungarian Chamber of Agriculture. Furthermore, there is another alternative way to solve disputes in the frame of the Chamber of Agriculture, that is attached to the consumers' protection. Act CLV/1997 on Consumers' Protection determines the establishment of Conciliatory Counsels. The Counsel's aim is to solve quick and efficiently disputes between consumers and farmers, in reaching a friendly settlement. These started to work by 1st January 1999, nevertheless as to agricultural matters there have been practically no relevant cases so far.

<u>The Hungarian Chamber of Agriculture</u>

In order to diminish the role of the state in the economy, which switched for fourty years before 1989/90 between monopol and overwhelming, the Hungarian Parliament (hereinafter: Parliament) created with Act XVI/1994 the Chambers of Economy. According to this, the Hungarian Chamber of Agriculture was created the 20th December 1994 as a public corporation having legal personality with a nation wide competence dealing with public tasks. The Parliament adopted Act CXXI/1999 the 21st December 1999, the new law on Chambers of Economy. The Chambers were accordingly reorganized in 2000.

Members of the Hungarian Chamber of Agriculture are the Chambers of Agriculture of the capital and the regions. The 20 regional Chambers of Agriculture are equally public corporations, their members are the economic organizations[6] pursuing agricultural, forestry, commercial fishing

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[4] See CSÁK, Csilla: A magyar agrárjog átalakulása 1985/1990-2005, in: JAKAB, András – TAKÁCS, Péter (ed.): *A magyar jogrendszer átalakulása 1985/1990-2005* (Vol. II), Budapest, Gondolat, 2007. pp. 744-747

[5] See Szilágyi, János Ede: Az agrárjog dogmatikájának új alapjai – útban a természeti er_források joga felé? (New Basis for the Dogmatics of Agricultural Law – Heading for the 'Law of Natural Resources'), Jogtudományi Közlöny, March 2007, No. 3

[6] According to Article 685 of Act IV/1959 on the Civil Code of the Republic of Hungary, 'economic organization' means state-owned companies, other state-owned economic agencies, cooperatives, business associations, professional associations, the European Economic Interest Grouping,

and hunting activity, inclusively the directly connected processing, trading and service activity. The Chambers of Agriculture actually have 11 000 voluntary members, one-third 'small-scale agricultural producer', one-third private entrepreneurs and one-third economic organizations having legal personality. The members represent 60 percent of the gross agricultural production.

Tasks of the Hungarian Chamber of Agriculture are to:

a) evaluate and comment on economy-related propositions and legislative bills;

b) maintain contact with the national organizations of foreign chambers of economy, and international economic organizations. For example, the Chambers of Agriculture of the V4[7]-countries have yearly 3-4 meetings in order to coordinate our agricultural interests and various questions of the CAP.[8]

c) coordinate the manner in which the chambers of commerce disseminate economic information and publicity in foreign countries, from Hungary to foreign countries, and in Hungary for foreigners;

d) organize events showcasing the Hungarian economy;

e) develop a uniform system for registering members in chambers of economy;

f) draft a code of ethics containing the rules of ethics governing unfair market practices;

g) participate, in accordance with the provisions of other laws, in the work of national councils and bodies.

h) lay down the principles for dividing the central subsidies[9] provided for the fulfillment of public duties among the regional chambers of economy;

i) draw up the self-administration rules providing a single platform for the fulfillment of public duties conferred upon the chambers. (Act CXXI/1999, Article 12(1))

j) convey an opinion on whether a standard term in a consumer contract should be treated unfair, unless the standard contract conditions in question is prescribed mandatory by law.

The Arbitral Tribunal

The institution of arbitration is incredibly old, it was already used in the Hittite and the Hellene territories.[10] Already the story of Troy is based on a decision of an arbitrator, Prince Paris. (Actually, he shows one of the reasons to annul such a judgment: embracery…) In the Middle Ages, the princes took the role of an arbitrator, sometimes for the request of the pope. Since the end of the 18th century, it is from the United States of America that arbitration unfolds in international law. (In this development the two Hague agreements of 1899 and 1907 are significant, dealing with *ad hoc* arbitral tribunals and the Permanent Court of Arbitration.)

In the last decades in national as well in international level, arbitration became more and more significant again, even as to disputes of parties in economic relations, and – in international level – environmental questions are solved this way as well.[11]

Therefore, Act LXXI/1994 on Arbitration was adopted by the Parliament.

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nonprofit companies, companies of certain legal entities, subsidiaries, water management organizations, forest management associations, court bailiffs' offices, and private entrepreneurs.

[7] Visegrád 4: Czech Republic, Hungary, Poland and Slovakia. The first EU wide consultation of Chambers of Agriculture took place the 6th October 2005 in Poznan.

[8] See our national report in Commission I – written by SZILÁGYI, János Ede. And on the CAP: SZILÁGYI, János Ede: EU – Common Agricultural Policy, EuPA, to appear.

[9] See furthermore: OLAJOS, István: Az agrár- és vidékfejlesztési támogatások eljárása, pp. 359-368

[10] See furthermore: KOVÁCS, Péter: *Nemzetközi közjog (Public international law)*, Budapest, Osiris, 2006. p. 472 ff.

[11] PCA: Case on the chlor-pollution of the Rhine (France v. the Netherlands), March 12, 2004

According to Article 2 of Act LXXI/1994 and Article 12 (2) of Act CXXI/1999 (on Economic Chambers) the Hungarian Chamber of Agriculture created a permanent Arbitral Tribunal in order to solve disputes occurring in the agriculture. The Hungarian Chamber of Agriculture adopter the 5th May 1997 in its general assembly the Procedure of Rules of the Permanent Arbitral Tribunal working at the Hungarian Chamber of Agriculture, and gave an authorization for the Arbitral Tribunal to start its work, which happened the 15th October 1997 – so in some days exactly a decade ago – and has from year to year more cases to deal with. Nevertheless, this form of alternative jurisdiction has not yet reached the status it has in Western European countries, therefore in Hungary the advantages of arbitration – especially in the field of agriculture[12] – has to be mentioned:

i. Expertise: Not contesting the legal expertise of the ordinary courts, it is a great advantage that in the nomenclature of the arbitratory judges besides lawyers also acknowledged experts of the agriculture take place. They are nominated by the regional Chambers. These experts are optional judges in the given cases and guarantee therefore the special competence as well.

ii. Promptitude: The adjudicating judge or section of judges is obliged to decide within 6 months – compared to the processes before the ordinary courts where a duration of 2 years is the average, here the average is 3 months. The urgency procedure ensures that within 30 days a hearing is held, and within 60 years there is a judgments on the merits. It serves that within a very short time binding decisions are made. Also procedures are possible where there is only a written, and no oral part.

iii. Cheapness: The fees of the procedures are as a whole much lower than the dues by the ordinary courts. It is also due to the fact that it is a one-instance procedure, and so better for the entrepreneurs, the companies as well as others interested in the process.

The Arbitral Tribunal aims to close the dispute with a friendly settlement of the parties. This friendly settlement can be concluded in the process and then contained in the judgment, or a judgment without a friendly settlement can be delivered – the judgment's legal force is equal to that of a judgment of an ordinary tribunal. The judgments are executory without further delay. The declaration of their annulment is only possible in cases determined explicitly by the law. (There has not been an annulment so far.)

In the procedure before the Arbitral Tribunal both parties can assign judge or judges into the section, from the names of the above metioned nomenclature. That is how the parties feel much more being the lords of the process than in processes before the ordinary tribunals. In most of the cases judgments are delivered in cases involving great financial interests. For the parties it is of high relevance in most of the cases that their finances are not published, therefore – unless the parties indicated it otherwise – the procedure before the Arbitral Tribunal is not open.

Possible is that the parties indicate the acceptance of the Arbitral Tribunal's competence in the contracts with a compromise clause saying the Arbitral Tribunal can decide in disputes in connection with the contract's validity, interpretation, non-fulfillment or cancellation. Another option is that the parties sign a declaration together after the conclusion of the respective contract.

As the processes are not open to the public, it is not at all possible to maintain information on the concrete cases. All that we could find out is due to the kind help of the president of the Arbitral Tribunal, *Dr. János Jancsó*. As he said, there is a documentation in preparation (for the

[12] As, e.g. in the Artbitration Tribunal of the Chamber of Commerce, there is a huge number of cases each year. It is probably originated in the times before the change of system 1989/1990 and the commercial problems of foreign companies in the socialist Hungary, which they could only solve via special arbitratory tribunals as the ordinary jurisdictional ways were quasi not open for them. (In most of the cases the arbitration clause of that time just remained in the rewritten contracts.)

tenth anniversary of the functioning of the Tribunal) where – protecting the interests of the parties – the most important or interesting cases are going to be collected, but even with his kind cooperation we could only get a little part of the information. Nevertheless, this book coming out hopefully in the near future serves to show and examine the jurisdiction in the concrete cases and their experiences. Although it cannot help us further in the Caserta 2007 meeting, I am convinced that it is going to be an interesting lecture.

Generally we can say that the number of cases coming before the Arbitral Tribunal is varying each year, but in 1997 and in the first semester of 1998 the focus was on the organization. The second half of 1998 brought the first cases and the hearings in them (altogether five). Next year already 16 cases were brought before the Tribunal, in 2000 even 22. The change of the Chambers' system affected the work of the Tribunal as well: in 2001 18, and in 2002 only 8 cases were brought before the Tribual. Reason was that less contracts included the clause of compromise, partly because of the insecure situation of the Chambers, partly because of the judgments not always favourable for engrosser companies. In 2003 a new group of cases appeared, that of the chemical fertilizers bought with a discount: this year the Tribunal had to deal with altogether 46 cases. 2004 the Tribunal had to face 96 cases – that is a great improvement. This is when the petitions of the Biokontroll Kht. appeared (the public interest is the reason why it is not a secret). 2005 the number of cases fell to 38. This tendency continued in 2006 as well, last year the Tribunal had only 12 cases. Besides the insecure situation of the Chamber also the change in the market was visible, namely that instead of buying up interventional selling was in the focus.

Rules of the Arbitral Tribunal of the Chamber of Agriculture

Above all, as by other tribunals as well, one or more judges adjudicate, if more, their number is always even. Nevertheless, there are some rules determining who can turn to the Arbitral Tribunal: at least one of the parties has to be professionally engaged in economic activity and the legal dispute has to be in connection with this activity, the parties have to be able to freely dispose over the subject of the proceeding, and they had to condition in the contract the arbitratory procedure. The compromise (agreement on arbitration) has to be written, the Rules of Procedure (hereinafter: RP) even accepts a compromise through modern technics, i.e. email or sms!!! (Article 1 (5) RP as well as Article 3 of Act LXXI/1994) Another key point is the budget of the Tribunal which comes mainly from the fees of the procedures and some help from the part of the Hungarian Chamber of Agriculture (see Article 2 RP). The rules for the judges are somewhat similar to those for judges in ordinary tribunals: they have to be independent and impartial, they cannot represent the parties, they are obliged to keep the circumstances in secret, even after the procedure. Nevertheless, they have to be over 24 and fulfilling all the consequences for a judge (clean sheet, not under wardship, etc.) (Article 4 RP). The applicable law is the 'Hungarian material law' (Article 16 RP), the language of the procedure is not forcedly Hungarian, as by the Arbitral Tribunal of the Chamber of Commerce, here as well other languages can be used (Article 17 RP). Also the Act LXXI/1994 on arbitration is the source of these rules where it is among others determined that (as partly mentioned above in Question 1):

27. In the course of the arbitral proceedings the parties shall be treated with equality, and each party shall be given the opportunity of presenting its case.

28. Subject to the provisions of this Act, the parties are free to agree on the rules of procedure to be followed by the arbitral tribunal, including also the stipulation of the rules of procedure of an institutional arbitral tribunal. Failing such agreement the arbitral tribunal may, subject to the provisions of this Act, determine the rules of procedure at its own discretion.

31. (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, while the institutional arbitral tribunal shall act at its seat specified in its deed of foundation.

(2) Notwithstanding the provision of subsection (1), the arbitral tribunal may - unless otherwise agreed by the parties - meet at any place for consultation among its members, for hearing the parties, witnesses or experts, as well as for inspection of objects and documents.

34. (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall hear the parties and give them the opportunity to submit their petitions. The arbitral tribunal shall hear the witnesses and experts present, but it cannot apply a fine or another means of coercion.

Article 20 RP (according to Article 29 of Act LXXI/1994 declaring that the arbitral proceedings are not public) determines that nobody – only the parties and the Tribunal – has the right to look into the documents of the procedure. As we presume, the two major problems are the complete non-publicity and the lack of knowledge about the Tribunal; positive is that – even when not progressively – it is working, and that absolutely lawfully (no decision has been annuled so far by ordinary tribunals).

3. Set out any Statutory Provisions or lack of them dealing with Independent Assessors. Are there any problems in practice either with these rules or lack of rules in your country?

Hungary does not have any Statutory provisions alike.

4. Set out any Statutory Provisions or lack of them dealing with Mediation.

I. Directive SEC(2004) 1314

There are not so many documents regarding the proposal in Hungary. The aim of the Draft directive is to make mediation widely known as a practical way of settling disputes. This draft prescribes a frame directive, which will be applicable to disputes over the borders. The issues of the directive are going to be:

a. the improvement of the quality of the mediation
b. establishment of connection between the civil procedure and mediation,
c. the enforcement of decisions.[13]

II. Short answers to the questions:[14]

Question 4.1. How is the Directive SEC(2004) 1314 applied in your country?. If your country is not in the EU have any similar systems been adopted and how are these promoted?

The draft Directive SEC (2004) 1314 will be fully applied in Hungary. In the course of the creation of the Directive, Hungary finds it important to have a directive in the field of mediation. The

[13] Information is based upon the experiences of NÉMETH, Csaba, who was member of the Hungarian Delegation in 2004 in Brussels.

[14] The answers are based on the same source of information too.

unification of regulations is a good initiation of the EU. Hungary supports this draft directive and finds guarantee in the draft so that the mediation could be widely used in different countries.

Question 4.2. It is noted that Denmark has opted out of the directive SEC(2004)1314 on Mediation and it would be interesting to know the reasons for this. Would any of the other countries have similar objection?

The experts of Hungary does not have any information about the reason of the Danish opt out. Yet, the Holland view is known to them. Holland experts refuse the Draft because their recent system works so effective and satisfactory, they do not want to disturb it.

If countries have got any objection, it might comes from the existing feasible procedure systems, which they do not want to disturb.

Question 4.3. Does your country have compulsory mediation and is this satisfactory?

Compulsory mediation does not exist in Hungary. It is always voluntary. However, besides its voluntary nature, where mediation is usually applied like in the health system, education etc.; it is satisfactory.

In other areas, where mediation is not applied as a measure of settling disputes, the draft directive proposal should be applied:

"The purpose of Article 3 is to ensure that the parties, as a general rule, consider the possibility of using mediation for solving the dispute. The parties retain the right to decide whether to actually have recourse to mediation or not, since the article does not introduce any obligation. However, the court shall have the right to oblige the parties to attend an information session ***on what mediation is all about, for example, in cases where the court considers that the dispute as such would be suitable for mediation but it appears that the parties reject this possibility due to a lack of knowledge of mediation.*** *The provision of information sessions themselves is the responsibility of the Member States. While the proposed directive does not make mediation compulsory it does not exclude the possibility for Member States to provide for such rules, provided they do not impede on any of the parties' right to access to the judicial system, especially in cross-border situations." SEC(2004)1314*

Question 4.4. Do you see any problems in your country intend on the enforcement of agreements reached by mediation? (This should not be a problem if the agreement is set up correctly either by an enforceable agreement or as an agreed judgment of the court).

Mediation, where it is applied, in itself is very satisfactory and effective; in 90% of the cases the parties agree in case of mediation in the field of Labour Law. This information comes directly from Zoltán RÁCZ, Arbitrator registered in Industrial Relations Mediation and Arbitration Service (IRMAS) [MKDSZ].

Questions 4.5. As regards admissibility of evidence of the details of the mediation and the mediator in the UK the mediation agreement provides for this. Article 6 brings these provisions into the statute. Do you see any problems with these provisions?

The essence of mediation is that it is "Without Prejudice" to any formal proceedings.

"*Regarding Article 6, it must be stressed that the possibility for the parties to agree on the confidentiality of the process belongs to the key advantages of mediation, and can be vital for the effectiveness of the process itself. There are however certain limits to which an* ***agreement of the parties, and a commitment of the mediator, can effectively protect confidentiality. This is notably the case in subsequent judicial proceedings, where the court may not respect the agreement of confidentiality and consequently admit, for example, the mediator to be heard as a witness.*** *This is due to the basic rule of civil procedure found in most Member States that any evidence may be brought forward by the parties, provided it is relevant for the case, and that persons called to testify are under an obligation to do so by law. While the parties may make use of contractual remedies in case one of them does not respect the confidentiality of the mediation this can be regarded as an insufficient sanction if the mediator is called as a witness by one of the parties. A further justification for such provisions is the need to provide a level playing field for mediators. Some mediators belong to regulated professions who are bound by professional secrecy, while others do not. This gives an unfair competitive advantage to the former group, and therefore calls for specific provisions to be introduced to protect certain aspects of the confidentiality of the process regardless of the profession of the mediator.*

The protection of confidentiality outside any subsequent judicial proceedings does not call for a regulatory intervention. It is purely a question of a contractual rule, which would be made mandatory if it were to be laid down in law (possibly subject to if the parties have agreed otherwise), and there is not sufficient public interest to establish binding rules on this issue at Community level.

The article has been modeled upon the corresponding provision of the UNCITRAL model law on commercial conciliation, which not only provides a good model in itself but also allows for promoting consistency between different rules on mediation.

In particular, the construction chosen with an enumeration of specific points which are covered by the confidentiality, instead of a more generic rule, is more appropriate having regard to the unregulated nature of mediation and the mediator. It should be recalled that the directive, and consequently this provision, only applies in civil matters and evidence from the mediator would therefore be admissible in criminal proceedings. An exception has been provided for as concerns the interpretation and enforcement of a settlement agreement. This may involve questions concerning the validity of the settlement agreement or its compliance with national law if enforceability is sought, and a court or authority seized with such questions must be able to rely on evidence from the mediator to make a proper assessment of the case.

Further exceptions for overriding considerations of public policy can be made, where the most important examples have been spelled out in the Article." SEC(2004)1314

In this case there is a collision between the principle of confidentiality and of the principle of free use of evidence in the civil procedure.

Protection of confidentiality of the process; secrecy is an essence of Mediation. So, this principle must be respected in any cases. If not, then the mediation would undermine its role in the settlement of disputes. If there is a scope for the misuse of mediation and the information provided for in the course of the process, then the people can not be expected to apply for mediation. By the implementation of the Directive, this proposal must be laid down strictly in national law.

Hungary supports the absolute confidentiality. Therefore, the Civil Procedure Code has laid down a new provision, in which the witness can refuse to make a statement if he/she has taken part in mediation as a mediator.

III. MEDIATION IN HUNGARY

1. Introduction

At the Civil Court Review of the CEDR in 2000 Ian Walker of Russell Jones Walker said, that everybody only spoke about mediation. Everybody agrees that it is a good institution, but in fact, not many people gain experiences in this field. This saying is true nowadays as well. There are many misunderstandings about mediation. Though, mediation can always occur if conflict turns up. There are so many people who have been quarreling for a long time; and thy don not know about this possibility. Many attorneys think mediation as a process before the court; and they mistake the mediator for a judge.

The essence of mediation has been defined by Riskin in 1994:

"The essence of mediation is, that the parties can be "partners" again, and not by means of obligations, but by creating a new view about their relationship."

Mediation has got three fundamental factors, as we know: consensus, private nature, common reliance, *dominance of claims and interests*. This means that instead of the dominance of rights and obligations, because of the interests of the parties the solution of the conflict becomes reality. The mediation looks into the future, and it is important to the parties *to maintain the relationship.*

2. Mediation in agrarian Law

Mediation is not used in agrarian disputes. There were people who tried to implement this way of settling disputes, but this initiation was not accepted.

3. Economic, business mediation

This kind of mediation is widely used in Hungary. It is a reasonable, effective, fast process, which is governed by Act LV of 2002. The aim is the conciliation of debates between undertakings and businesses. By means of mediation the trap of communication can be avoided. The most frequent disputes are in connection with the compensation and the guarantee.

4. Mediation in Labour Law[15]

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[15] This part of the report is based upon the publications and lectures of RÁCZ, Zoltán, mediator in MKDSZ and associate professor at University of Miskolc:

-Lecture at the Jubilee of University of Miskolc, 9 Sept 1999, about the recent questions of the mediation.a

-Lecture at a conference organized by six trade unions on the occasion of the accession to the EU, 11 October 2000, about Labour law disputes.

Mediation is not compulsory in Hungary at all. It is a possibility to settle disputes. It appeared at the beginning of the '90s, after the transformation of regime in order to settle disputes in *labour law*. Since there are special rules concerning mediation in the health system, education system, protection of consumers and the public procurement. The Act LV of 2002 on the mediation came into effect in 2002 in order to ease the burden on the courts. Mediator can carry out this activity if he/she is registered in the mediators' list updated by the Ministry of Justice.[16]

In the following there are some details given about the **Industrial Relations Mediation and Arbitration Service (IRMAS) [MKDSZ] (hereinafter: the Service).**

Seat of the organisation is1051 Budapest, Roosevelt tér 7-8.

Leader of organisation is the Director

Mission of the Service: in order to promote the maintenance of social peace at the work place, sectoral and at intersectoral levels it shall participate in the effective settlement of interest disputes at the work places and in the resolution of conflicts as swiftly as possible; it should help develop the culture of industrial relations.

Fundamental principles and values:

a/ The utilisation of the Service is voluntary and depends on the free will of the disagreeing parties, except for the specific cases regulated in section 197. of the Labour Code. The guiding principle of the Service is that an external, neutral, independent party can efficiently and successfully participate in the settlement of the interest controversy between two other parties.

b/ The Service with its activities contributes to the currently available methods for the settlement of labour disputes. The constitutional right to turn to a Trial Court is not violated by introducing the institution of arbitration.

c/ The mission of the Service: to help to make nationally accepted and widespread the forms of mediation and arbitration as new activities. This in practice mainly means that in case of labour controversies the most suitable, prepared and trained mediator or arbitrator is offered who best suits the needs of the parties.

d/ The mediators/arbitrators are independent, they do not take sides and they are not representatives of the parties. During their procedures they cannot receive orders and they are bound to keep in full secret every information they got access to during the performance of their activities, even after the finishing of the procedure. They have to formally declare in writing that they accept these conditions within eight days after they are listed in the register.

-History of labour law disputes till the transformation of regime. Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica Tomus XX/2., 2002. p. 613-643.
-Mediation as a process supporting the economy,. MicroCAD 2003. Section P. 99-105. o.
-New opportunities of lawyers according to the Act on Mediation, Advocat 2003/1.

[16] See also: VARGA, Zoltán: Some cases of the Holland and Hungarian's employment contract's termination. Doktoranduszok Fóruma, Miskolc, Bíbor, 348-354.

See also: TÓTH, Hilda: Succession on behalf of the employer in the course of the jurisdiction, Jubilee studies, Labour Administration, Labour Jurisdiction, Miskolc, Bíbor, 2002, p. 457-475.

e/ In the formation of the organisation and the operation of the Service - both at the time of its establishment and its continuous functioning - flexibility and cost-effectiveness are the determining principles.

f/ Social control over the operation of the Service is exercised through the National Conciliation Council, but without limiting the autonomy of the Service during its operational activity.

The activity of the Service: participating in the resolution of labour controversies, which can be in the form of mediation or arbitration. The Service can function as an institution for arbitration in a limited field only, i.e., in the cases specified in section 197. of the Labour Code (in these cases the Labour Code ordains a mandatory arbitration procedure), or, on the basis of a mutual agreement by the involved parties, according to section 196. of the Labour Code. Upon request, the Service provides professional advice in questions related to industrial relations, in order to prevent conflicts. The Service does not provide legal counselling. It arranges for the preparation, education and further training of the persons listed in the register.

The Register of the Mediators/Arbitrators

The compilation of the register

The activities of the Service are performed by the mediators and arbitrators who are listed in the register.

The procedural rules for the selection of the mediators/arbitrators are the following:

The National Conciliation Council issues a call for applications which includes the conditions that have to be met in order to get into the register (see Appendix I.).

The requirements that the mediators/arbitrators have to meet:

-Hungarian nationality
-certificate of clean police file, issued within the past 30 days
-university or college degree
-detailed CV with professional career
-minimum five years of experience in the field of labour law and industrial relations
-the applicant agrees to participate in the training organised by the Service
-good skills and motivation in establishing contacts, co-operation and communication
-psychologically well-balanced personality.

Letters of reference and recommendation can be attached to the application. The applicant has to attach to the application a letter of intention by his/her employer - if there is any - in which the employer - who is in an employment relation (or in a legal relation identical to that) with the applicant - declares that s/he is willing to release the applicant from working place obligations for the time of mediation/arbitration unless the applicant has urgent responsibilities at his place of employment during that period.

The National Conciliation Council establishes a tripartite committee (hereinafter: the Committee) to evaluate the applications. The organisations in the National Conciliation Council can delegate 1 person each, while the government can delegate maximum 5 persons to the Committee. The work

of the Committee is made complete by a psychologist who functions as an adviser. Experts will help prepare the members of the Committee delegated by the National Conciliation Council.

The Committee decides after interviewing the applicant. Applicants who do not meet the requirements set forth in a./ do not qualify for the hearing. The director of the Service (or, in case the director is not appointed yet, the Secretariat of the National Conciliation Council) informs the applicant and the Committee if the application is not accepted. In order to enter an applicant into the register, a consensual decision is needed in which the three parties have on vote each. c./ The person who is listed in the register gives a statement in writing whether there is any profession, sector or region s/he would like to prefer or avoid. In this respect, the registered person can make the following statements:

-s/he is ready to work in any field (profession, sector, region),
-s/he is ready to work in any field (profession, sector, region), but has a preference for certain - fields (which s/he specifies),
-s/he accepts only those fields s/he specifies,- s/he would like to avoid certain fields, and
-accepts those only in case of necessity,
-s/he does not accept certain fields.

The mediators and the arbitrators who get into the register are also separately put into a record file which is kept as a basic document in a separate dossier called Service File.

There are other important provisions regarding:

-General rules for starting the procedure of mediation or arbitration

-The duties of the mediator/arbitrator

-Preparing and training mediators/arbitrators

-Promotion of the public image of the Service (PR)

5. Appeals

Following decisions of Tribunals and Arbitrators what are the basis of appeal to the courts in your country?

The judgments are immediately in force and can be executed. Nevertheless, setting aside of the judgment (award) of the arbitral tribunal is possible. As Act LXXI/1994 determines:

54. Against the award of an arbitral tribunal no appeal may be lodged; only the setting aside of the award may be applied for at the court, for the reasons listed in Section 55.

55. (1) The party, furthermore the person who is affected by the award, may request, by a statement of claim within sixty days of the delivery to it of the award of the arbitral tribunal, the setting aside of the award by the court if

a) the party having concluded the arbitration contract had no legal capacity or capacity to act;

b) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon under Hungarian law;

c) it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;

d) the award was made in a legal dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions not submitted to arbitration may be set aside;

e) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties - unless such agreement was in conflict with a provision of this Act from which the parties cannot deviate, or failing such agreement, was not in accordance with this Act.

(2) The setting aside of the arbitration award may also be requested alleging that

a) the subject-matter of the dispute is not capable of settlement by arbitration under Hungarian law, or

b) the award is in conflict with the rules of Hungarian public order.

(3) Failing to keep the time limit defined in subsection (1) entails the forfeiture of right. In case of an additional award the time limit shall be calculated from the delivery thereoof.

56. (1) The court may suspend the enforcement of the award of an arbitral tribunal upon the request of a party.

(2) The judgment of the court shall be confined exclusively to the setting aside of the award of the arbitral tribunal.

57. Otherwise, the procedure of the court shall be governed by the provisions of the CPC, with the proviso that no appeal may be lodged against the court's decision.