

LAW ON PEACEFUL LABOR DISPUTES RESOLUTION

I BASIC PROVISIONS

Subject matter of the Law

Article 1.

This Law shall regulate the manner and procedure of peaceful labor disputes resolution (collective and individual ones), election, rights and responsibilities of the mediators and arbiters and other issues of importance for peaceful labor disputes resolution.

The procedure of peaceful labor disputes resolution shall be initiated and implemented in accordance with this Law, unless regulated otherwise for the specific labor dispute by a special regulation.

Collective labor dispute

Article 2.

Collective labor dispute (hereinafter: collective dispute) shall be the dispute that arises: in the procedure of signing, as well as changes of and amendments to the collective agreements;

- in case when the employer fails to apply the specific provisions of the collective agreement to all employees;
- with regard to the exercise of the right to trade union organizing;
- in the exercise of the right to strike.

Parties to the collective dispute

Article 3.

Parties to the collective dispute shall be as follows:

- for the dispute from Article 2, Paragraph 1, Items 1 and 2 of this Law, the participants in the signing of the collective agreement, in accordance with the Law;
- for the dispute from Article 2, Paragraph 1, Item 3 of this Law, the authorized representative of the trade union and the employer, that is, the representatives of the trade union organizations at the adequate level;
- for the dispute from Article 2, Paragraph 1, Item 4 of this Law, the strike committee that represents the interests of the employees and manages the strike on their behalf, and the employer, that is, the negotiation body designated by the employer.

Individual labor dispute

Article 4.

Individual labor dispute (hereinafter: individual dispute) shall be the dispute that arises in the exercise of the rights of the employee from work and on the basis of work. Parties to the individual dispute shall be the employee and the employer.

Mediator and arbiter

Article 5.

The mediator, that is, the arbiter shall participate in the procedure of peaceful resolution of collective and individual disputes. The mediator shall be the person providing assistance to the parties in a collective dispute, with the aim to conclude an agreement on dispute resolution. The arbiter shall be the person who manages the dispute and decides on the subject matter of the individual dispute.

Voluntary character

Article 6.

Parties to the collective and individual dispute (hereinafter: parties in dispute) shall decide voluntarily on engaging in a peaceful dispute resolution, unless regulated otherwise by this Law.

Equality

Article 7.

Parties in dispute shall have equal rights.

Confidentiality

Article 8.

At the request of the parties in dispute, each petition, instrument or other document used in the procedure of peaceful dispute resolution shall be returned to the parties, with no copies kept.

Impartiality and independence

Article 9.

The mediator, that is the arbiter, shall act in an independent and impartial manner, with the aim to achieve peaceful dispute resolution.

II AGENCY FOR PEACEFUL LABOR DISPUTES RESOLUTION

Establishment

Article 10.

In order to perform expert affairs regarding peaceful labor disputes resolution, the Agency for peaceful labor disputes resolution shall be established as a special organization, with the character of a legal entity (hereinafter: the Agency).

Scope of work

Article 11.

The Agency shall do the following:

1. perform expert affairs regarding peaceful resolution of collective and individual disputes;
2. select mediators and arbiters;
3. keep the Register of mediators and arbiters (hereinafter: the Register);
4. provide training and professional capacity building of the mediators and arbiters;
5. decide on the removal of mediators and arbiters;
6. keep the record of the procedures of peaceful labor disputes resolution;
7. perform other tasks stipulated by the Law.

Founding act

Article 12.

The Government of Montenegro (hereinafter: the Government) shall found the Agency from Article 10 of this Law.

The founding act of the Agency shall regulate the following: Agency bodies, responsibilities and manner of their election, duration of mandate, headquarters, funds for establishment and work, manner of adoption of the statute and other acts, and other issues of importance for the work of the Agency.

III MEDIATORS AND ARBITERS

Requirements

Article 13.

Person that fulfills the general requirements prescribed by the Law and the following special requirements may be elected to the position of a mediator or arbiter:

- 1) to be a citizen of Montenegro;
- 2) to have University degree and minimum five years of work experience in the field of labor legislation;
- 3) to have finished the relevant training program and professional capacity building program for mediators, that is, arbiters;

- 4) the person must not be sentenced for a criminal offense with an imprisonment sentence of minimum six months or for a punishable act that makes such a person inadequate for the performance of these tasks.

Training program

Article 14.

The Agency shall define the training program for mediators and arbiters, as well as the manner of implementation of that program.

Application

Article 15.

The Agency shall publish the invitation for the selection of mediators, that is, arbiters in one of the printed media in Montenegro.

Selection

Article 16.

The procedure for the selection and discharge from duty of the mediators, that is, arbiters, shall be managed by the commission established by the Director of the Agency. The decision on the selection of mediator, that is, arbiter shall be made by the Director of the Agency, at the proposal of the commission from Paragraph 1 of this Article.

Mandate

Article 17.

Mediator, that is, arbiter shall be elected for the period of four years and may be re-elected.

Register

Article 18.

The Director of the Agency shall adopt the decision on entry into the Register within three days from the date of adoption of the decision on election. The capacity of a mediator, that is, arbiter is acquired as of the date of entry into the Register.

Contents of the Register

Article 19.

The register shall contain the following data:

- 1) name and surname of the mediator, that is, arbiter;
- 2) address;
- 3) type of education;
- 4) name and seat of the employer, if employed;

- 5) reference number and date of the decision on election;
- 6) reference number and date of decision on entry into the Register;
- 7) reference number and date of the decision on erasure from the Register.

Mediator and arbiter shall report the change of data from Paragraph 1, Items 2 and 4 of this Article within three days from the date when the change arises.

Erasure from the Register

Article 20.

Capacity of the mediator, that is, arbiter shall cease with the erasure from the Register.

Mediator, that is, arbiter shall be erased from the Register in the following cases:

- 1) at his/her own request;
- 2) if it is established that the requirements on the basis of which he/she was elected have not existed or have ceased to exist;
- 3) if he/she refuses to undergo professional capacity building;
- 4) if he/she is irregular in responding to the invitation of the Agency;
- 5) if he/she is unjustifiably procrastinating the procedure of peaceful labor dispute resolution;
- 6) if his/her capacity to work has been limited on the basis of the court decision;
- 7) if it has been determined in the manner prescribed by the law that the mediator, that is, arbiter has lost the capacity to work.

Request for erasure from the Register may be submitted by the parties in dispute or some other interested person.

The request from Paragraph 3 of this Article shall be submitted to the commission and shall be justified.

The Director of the Agency shall adopt the decision on erasure from the Register, at the proposal of the commission, within 15 days from the date of submission of the request.

The decision from Paragraph 5 of this Article is final and it is possible to initiate an administrative procedure against it.

Publication of the decision

Article 21.

The decision on entry and erasure from the Register shall be published in the "Official Gazette of Montenegro".

Challenge of the mediator, that is, arbiter

Article 22.

Party in dispute may submit to the Director of the Agency a request for challenging the mediator, that is, arbiter, in the following cases:

- 1) if he represents, that is, has represented one of the parties in dispute in the past two years;

- 2) if he is a direct cognate up to any level, or indirect cognate up to the fourth level of kinship to one of the parties in dispute, that is, if he is a spouse or relative in marriage up to the second level of kinship to one of the parties in dispute;
- 3) if he has an employment relationship with one of the parties in dispute or if such a relationship existed in the past two years.

Mediator, that is, arbiter ex officio shall take into consideration the reasons for challenge during the procedure and shall inform the Director of the Agency of such reasons.

Director of the Agency shall decide on challenging the mediator, that is, arbiter, upon being informed by the mediator, that is, arbiter or at the request of the party in dispute, within three days from the date of learning that the reasons for challenge exist.

In case of challenge, the procedure of peaceful labor dispute resolution shall continue with the selection of the new mediator, that is, arbiter, in accordance with this Law.

Responsibilities of the mediator, that is, arbiter

Article 23.

Mediator, that is, arbiter shall manage the mediation procedure in an objective, conscientious manner, without procrastination, taking into consideration the interests of each party in the dispute.

Mediator, that is, arbiter shall undergo professional capacity building.

Mediator, that is, arbiter shall regularly inform the Agency on initiation, developments and ending of the procedure of peaceful labor disputes resolution.

Rights of the mediator, that is, arbiter

Article 24.

Mediator, that is, arbiter shall have the right to reward for work and compensation for the expenses he/she had during the procedure, in accordance with the act of the Agency.

IV PROCEDURE OF PEACEFUL LABOR DISPUTES RESOLUTION

1. Common provisions

Initiation of procedure

Article 25.

The procedure of peaceful labor dispute resolution shall be initiated by submitting the proposal to the Agency.

Parties in dispute may submit the proposal from Paragraph 1 of this Article jointly or individually.

The proposal shall contain especially:

- 1) name, surname and address, that is, name and seat of the parties in dispute;
- 2) type and subject-matter of the dispute;
- 3) participants in the dispute;

- 4) place and time of negotiations;
- 5) proposal of who should be the mediator, that is, arbiter;

Together with the proposal, parties in dispute shall also submit the documentation related to the subject matter of the dispute, as well as the names of the witnesses, if any.

Communication

Article 26.

If the proposal has been submitted by one of the parties in dispute, the Agency shall submit the proposal and the documentation to the other party in dispute and shall invite that party to state whether it accepts peaceful dispute resolution within five days from the date of receipt of the proposal.

Determination of the mediator, that is, arbiter

Article 27.

In case when the parties in dispute have submitted joint proposal, the mediator, that is, arbiter from the Register shall be selected by mutual agreement.

If an individual proposal for peaceful dispute resolution is accepted, the mediator, that is, arbiter shall be selected by mutual consent of the parties in dispute, within three days from the date of acceptance of the individual proposal.

If the parties in dispute fail to determine the mediator, that is, arbiter within the deadline from Paragraph 2 of this Article, the mediator, that is, arbiter shall be selected by the Director of the Agency.

Submission of proposal and documentation

Article 28.

The Agency shall submit the proposal and documentation regarding the subject matter of the dispute to the mediator, that is, arbiter who is selected for the specific dispute.

Cost of procedure

Article 29.

Each party in dispute shall bear its own costs in the procedure, except for the cost of mediator, that is, arbiter.

Adoption of the bylaw

Article 30.

More detailed requirements regarding the manner of mutual communication among the participants in peaceful dispute resolution and management of the procedure shall be prescribed by the Ministry responsible for labor affairs.

2. Collective dispute

Confidentiality

Article 31.

The procedure in the collective dispute shall be confidential.

Mediation procedure in case of collective dispute

Article 32.

The mediator shall schedule the hearing within three days from the date of receipt of the proposal and the documentation regarding the subject matter of the dispute and shall inform parties in dispute about such action.

Parties in dispute shall appoint their representatives and inform the mediator about that fact by the date of scheduled hearing.

If the parties in dispute fail to appoint their representative within the deadline from Paragraph 2 of this Article, the mediation procedure shall be managed by the mediator through direct contact with the parties in dispute.

Hearing

Article 33.

The mediator shall open and manage the hearing.

Representatives of the parties in dispute shall present their views and proposals in the hearing.

The mediator shall have the right to collect information and other data from the representatives of the parties in dispute separately, out of the hearing.

Upon ending the mediation procedure, the mediator concludes the hearing and, with the parties in dispute, adopts the recommendation on the manner of dispute resolution (hereinafter: the proposal).

Recommendation

Article 34.

Recommendation shall be issued in writing, with explanatory note.

It is necessary that the mediator and parties in dispute vote in favor in order for recommendation to be adopted.

If the recommendation fails to be adopted in the manner prescribed in Paragraph 2 of this Article within five days from the date of concluding the hearing, the mediator may propose the recommendation to the parties in dispute.

Recommendation of the mediator shall not be binding for the parties in dispute.

Non-acceptance of the recommendation

Article 35.

Party in dispute that does not accept the recommendation of the mediator shall state the reasons for non-acceptance of the recommendation within three days from the date of delivery of the recommendation.

At the proposal of the mediator, the Agency may publish the recommendation and the reasons for non-acceptance of the recommendation in the media.

Agreement

Article 36.

If the parties in dispute accept the recommendation, they shall sign the agreement on dispute resolution.

If the subject matter of the dispute is a collective agreement, the signed agreement becomes an integral part of the collective agreement.

If the subject matter of the dispute is not a collective agreement, the signed agreement shall have the power of a judicial settlement.

Dispute in the activities of public interest

Article 37.

In the activities of public interest, or in the activities where the interruption of work, due to the nature of business, could endanger lives and health of the people, or cause damage of a greater scale, parties in dispute shall engage in peaceful collective dispute resolution, in accordance with this Law.

The activities, in the sense of Paragraph 1 of this Article, shall represent the activities performed by the employers in the areas of: electricity supply, water management, transport, information (radio and TV), PTT services, communal activities (water production and supply, waste disposal, production, distribution and supply of energy sources, etc), fire protection, production of basic foods, health and veterinary protection, education, culture, social care for children and social welfare.

The activities of public interest, in the sense of this Law, shall include the activities of special importance for defense and security of Montenegro, in accordance with the law, and the affairs necessary for the fulfillment of obligations defined in international agreements, which are stipulated as such by the state authority responsible for the specific area or activity.

Joint proposal

Article 38.

In the activities from Article 37 of this Law, parties in dispute shall jointly submit the proposal, within three days from the date when the dispute arises.

If the parties in dispute fail to submit the proposal, they shall inform the Agency of such event. In case from Paragraph 2 of this Article, the Director of the Agency, ex officio, shall initiate the mediation procedure and appoint the mediator from the Register.

3. Individual dispute

Relationship between mediation and court proceedings

Article 39.

Individual dispute may be resolved before the arbiter.

If the court proceedings are underway, parties in dispute may agree to initiate the mediation procedure before an arbiter in any stage of the court proceedings.

Procedure before an arbiter

Article 40.

Arbiter shall schedule the hearing within three days from the date of receipt of the proposal and the documentation regarding the subject matter of the dispute, and shall inform parties in dispute of that action.

Hearing shall take place in the presence of the parties in dispute and the arbiter.

Arbiter shall open the hearing and determine whether all the invited persons attend the hearing.

If one of the parties in dispute fails to attend the hearing without justification, the arbiter may hold the hearing in absence of that party, taking into consideration the documentation submitted by that party.

Each party in dispute may withdraw the proposal for initiation of the procedure before an arbiter no later than the date of opening of the hearing.

Holding of the hearing

Article 41.

Hearing shall be public, unless parties in dispute agreed otherwise.

Arbiter may exclude the public from work in the cases stipulated by the Law on civil procedure.

Management of the hearing

Article 42.

Arbiter shall manage the hearing, hear the statements of the parties in dispute and other persons in the procedure, derive evidence and make sure that in the hearing process all the facts relevant for decision-making have been presented.

Parties in dispute shall have the right to express their views regarding the subject matter of the dispute and to respond to the claims of the other party in dispute.

Arbiter shall decide on postponing the hearing, ex officio or at the request of the party in dispute.

In the case from Paragraph 3 of this Article, the arbiter shall schedule the hearing no later than within three days from the date of postponing the hearing.

Hiring an expert

Article 43.

Arbiter may hire an expert.

Provisions of this Law regarding the challenge of an arbiter shall apply accordingly in case of challenge of an expert.

Closing statements and concluding the hearing

Article 44.

Parties in dispute shall have the right to closing statements in the hearing.

If the subject matter of the dispute has been heard, that is, if the parties in dispute have agreed on the subject matter of the dispute so that the arbiter may decide, the arbiter shall conclude the hearing.

Adoption of decision on the subject matter of the dispute

Article 45.

Arbiter shall adopt the decision on the subject matter of the dispute within 30 days from the date of opening of the hearing.

During the procedure before the arbiter, the deadlines for initiation of dispute before the responsible court shall not run.

No appeal shall be possible against the decision from Paragraph 1 of this Article.

The decision shall be final and enforceable as of the date of delivery to the parties in dispute, and if the decision stipulates that the action that is subject to enforcement may be enforced within the specified deadline, the decision shall become enforceable as of the date of expiry of that deadline.

Annulment of the decision of the arbiter

Article 46.

Against the decision of an arbiter it shall be possible to initiate action for annulment.

The decision of the arbiter may be annulled by the court, only if the party that initiates the action for annulment proves the following:

- that the agreement on selection of an arbiter has not been concluded or has not been effective;
- that the dispute has been decided by an arbiter who had had to be exempt/challenged;
- that the party in dispute had not been capable of concluding the agreement on selection of an arbiter;
- that the party that initiated the action for annulment has not been properly informed about the initiation of the mediation procedure before an arbiter, or that it had been prevented in an illegal manner from presenting its views before the arbiter;
- that the decision relates to the dispute that is not stipulated in the agreement.

Informing the court

Article 47.

Parties in dispute shall inform the court about the adoption of the decision if the procedure before the court has been interrupted.

V RECORDS ON PROCEDURES OF PEACEFUL LABOR DISPUTES RESOLUTION

Article 48.

The Agency shall keep the record of the procedures of peaceful labor disputes resolution.

The record shall contain especially the following:

- 1) name, surname and address, that is, name and seat of the parties in dispute;
- 2) name and surname of the mediator, that is, arbiter;
- 3) subject matter of the dispute;
- 4) date of initiation of the procedure;
- 5) date and manner of ending the dispute.

VI FINANCING

Article 49.

Funds for the work of the Agency shall be secured from the budget of Montenegro and other sources (donations, presents, etc).

VII TRANSITIONAL AND FINAL PROVISIONS

Article 50.

The Agency shall be established within 60 days from the date when this Law comes into effect.

Selection of the mediators and arbiters and their entry into the Register shall be executed within six months from the date when this Law comes into effect.

Article 51.

The bylaw from Article 30 of this Law shall be adopted within 60 days from the date when this Law comes into effect.

Article 52.

Collective agreements shall be harmonized with this Law within six months from the date of enforcement of this Law.

Article 53.

The provisions of Articles 122, 123 and 124 of the Labor Law (“Official Gazette of the Republic of Montenegro” no. 43/03 and 25/06) and the provisions of Articles 6 and 12, and Item 1 of Paragraph 1 of Article 23 and Item 4 of Paragraph 1 of Article 25 of the Law on Strike (“Official Gazette of the Republic of Montenegro” no. 43/03 and 71/05) shall cease to be valid as of the date of enforcement of this Law.

Article 54.

This Law shall come into effect on the eighth day from the date of being published in the “Official Gazette of Montenegro”, and it shall be implemented as of January 1, 2008.