

# **LAW ON AMICABLE RESOLUTION OF LABOR DISPUTES**

## **I. BASIC PROVISIONS**

### **1. Scope**

#### **Article 1.**

This law shall stipulate mode and procedure of amicable resolution of collective and individual labor disputes, selection, rights and duties of conciliators and arbiters and other issuer relevant for amicable resolution of labor disputes.

The procedure for amicable resolution of labor disputes shall be initiated and conducted in accordance with provisions of this law, unless the ruling in the same dispute has been made in accordance with labor regulations.

### **2. Main concepts**

#### **Article 2.**

Collective labor dispute, as defined in this law, shall be a dispute in relation to conclusion, amendments or implementation of collective agreements, realization of rights of association into trade unions and strike (hereinafter: collective dispute).

A party in collective dispute, as defined in this law, shall imply parties in collective agreement in accordance with the law (hereinafter: party in dispute).

#### **Article 3.**

Individual labor dispute, as defined in this law, shall be a dispute on termination of employment contract and payment of minimal wages (hereinafter: individual dispute).

A party in individual dispute, as defined in this law, shall imply employer and employee in accordance with the law (hereinafter: party in dispute).

#### **Article 4.**

Conciliator, as defined in this law, shall be a person providing assistance in order to reach agreement and resolve the dispute.

Arbiter, as defined in this law, shall be a person deciding on the subject matter of an individual dispute.

### **3. Basic principles**

#### **1) Principle of voluntary participation**

##### **Article 5.**

All participants in conclusion of collective agreement are free to decide voluntarily on participation of conciliator in collective bargaining.

Parties in dispute are free to decide voluntarily to accede to amicable resolution of dispute, unless this law stipulates otherwise.

#### **2) Principle of tripartism and impartiality**

Parties in dispute and conciliator or arbiter shall participate in the process of amicable resolution of labor disputes, in accordance with this law.

Conciliator or arbiter shall proceed impartially.

## **II. NATIONAL AGENCY FOR AMICABLE RESOLUTION OF LABOR DISPUTES**

### **1. Establishment and scope of activity**

##### **Article 7.**

The National Agency for Amicable Resolution of Labor Disputes shall be established as a special organization (hereinafter: Agency).

##### **Article 8.**

The Agency shall perform the following duties relating to:

- 1) amicable resolution of collective and individual labor disputes;
- 2) selection of conciliators and arbiters;
- 3) keeping the Directory of conciliators and arbiters (hereinafter: Directory);
- 4) advanced training of conciliators and arbiters;
- 5) decisions of challenge of conciliators and arbiters;
- 6) records on procedures of amicable resolution of labor disputes;
- 7) other statutory duties.

## **2. Agency Director**

### **Article 9.**

Operations of the Agency shall be managed by the Director.

The Director shall be appointed by the Government of the Republic of Serbia (hereinafter: Government).

## **II. PROCEDURE OF AMICABLE RESOLUTION OF LABOR DISPUTES**

### **1. Joint provisions**

#### **1) Initiating the procedure**

##### **Article 10.**

The procedure of amicable resolution of labor disputes shall be initiated by filing a motion to the Agency. Parties in dispute may file jointly or individually.

The motion shall contain in particular:

- i. Name and address or company name and seat of parties in dispute;
- ii. Subject of dispute.

The motion shall be accompanied with pertinent documentation in relation to the subject of dispute, as well as names of the witnesses, if any.

If the motion has been filed by one of parties in dispute, the Agency shall submit the motion and enclosures to the other party in dispute inviting him to declare whether he accepts amicable resolution of the dispute.

#### **2) Appointment of conciliator or arbiter**

##### **Article 12.**

Conciliator or arbiter shall be selected by the parties in dispute from the Directory, as a joint proposal, or three days after adoption of an individual proposal, at the latest.

Should the parties in dispute be unable to agree on the conciliator or arbiter, the Agency Director shall appoint one.

##### **Article 13.**

Agency shall submit the motion and documentation relating to the dispute to the conciliator or arbiter appointed for the dispute in question.

### **3) Cost of procedure**

#### **Article 14.**

Each party in dispute shall bear his own cost in the procedure, except for the cost of conciliator or arbiter.

#### **Article 15.**

Minister in charge of labor issues shall stipulate in greater detail mode of communication of participants in amicable resolution of labor disputes and the procedure, in accordance with this law.

### **2. Collective dispute**

#### **1) Participation of conciliators in collective bargaining**

#### **Article 16.**

Participants in collective agreement (hereinafter: participants) may file a motion to the Agency asking for participation of conciliators in collective bargaining in order to provide assistance and prevent dispute from arising.

Participants may file the motion jointly or individually.

If the motion has been filed by one of the participants, the Agency shall submit the motion and enclosures to other participants inviting them to state whether they agree with participation of the conciliator in collective bargaining.

The motion shall state the type of collective agreement, participants, venue and time of bargaining, joint proposal, name, family name and address of the conciliator.

#### **Article 17.**

The conciliator in the collective bargaining process shall:

- 1) attend the bargaining process,
- 2) indicate proposals that violate legal and other regulations,
- 3) provide professional and other assistance to the participants.

The conciliator shall be impartial in the course of bargaining.

#### **2) Dispute in activities for the common good**

#### **Article 18.**

In activities for the common good or activities where discontinuation of work may jeopardize life and health of people or inflict major damage, parties in

dispute shall accede to amicable resolution of collective dispute, in accordance with this law.

Activities referred to in para 1, above are activities pursued by employers in the following areas: electricity supply, water supply, traffic, broadcasting stations founded by the Republic of Serbia, autonomous province or local self-government units, postal services, utility services, manufacturing of basic dietary products, health and veterinary medical care, education, social care for children and welfare.

Activities for the common good, pursuant to the provisions of this law, shall also include activities of special interest for defense and security of the Republic of Serbia and tasks necessary for execution of international obligations of the Republic of Serbia defined by the competent state body for an area or activity.

### **Article 19.**

In activities referred to in Article 18 above, parties in dispute shall file a joint motion not later than three days after the dispute has arisen.

If the parties in dispute fail to file a motion they shall notify the Agency accordingly.

If the parties in dispute fail to file a motion, the Agency Director shall, *ex officio*, initiate the conciliation procedure and appoint the conciliator from the Directory.

## **3) Conciliation body**

### **Article 20.**

The conciliation procedure in a collective agreement shall be led before the Conciliation Panel (hereinafter: Panel).

The Panel shall be composed of one representative of each of the parties in dispute and conciliator.

## **4) Conciliation procedure**

### **Article 21.**

Conciliator shall schedule a hearing not later than three days after receipt of the motion and enclosures on the subject of dispute. He shall notify the parties in dispute accordingly.

Parties in dispute shall designate their respective representative on the Panel and notify the conciliator accordingly by the day of the scheduled hearing at the latest.

If the parties in dispute fail to designate their representatives within the term set in para 2 above, the conciliation process shall be led by the conciliator in direct contact with parties in dispute.

#### **Article 22.**

Conciliator shall chair the Panel.

Conciliator shall open and chair the discussion.

Representatives of parties in dispute shall present their respective cases and proposals.

#### **Article 23.**

Conciliator may collect information and other data from representatives of parties in dispute elsewhere, as well, and not only at the hearing.

#### **Article 24.**

After the conciliation procedure has been concluded, the conciliator shall close the hearing and, after deliberations with the Panel members give recommendation on how to resolve the dispute. (hereinafter: recommendation)

#### **Article 25.**

Panel shall give recommendation and substantiate it.

Consensus of all Panel members is needed for a recommendation.

If the Panel fails to give recommendation five days after conclusion of the hearing, conciliator may give his own recommendation to the parties in dispute.

#### **Article 26.**

Recommendation shall not be binding for parties in dispute.

Should the parties in dispute accept the recommendation, they conclude and agreement on resolution of the dispute.

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

If collective agreement is not the subject of dispute, the agreement has the power of court settlement.

#### **Article 27.**

The party in dispute that fails to accept the recommendation shall state reasons for refusal three days after receipt of the recommendation.

Upon advise of the conciliator, the Agency may announce the recommendation and reasons for refusal thereof in the mass media.

### **Article 28.**

The conciliation procedure shall be closed before the Panel if the parties in dispute conclude the agreement on resolution of the dispute 30 days after the first hearing.

### **Article 29.**

If the procedure is not closed in accordance with Article 28 above, the conciliator shall dismiss the Panel and continue the conciliation procedure in direct contact with parties in dispute.

In case referred to in para 1 above, the conciliator shall provide assistance to parties in dispute to meet, discuss the subject of dispute and conclude agreement on resolution of the dispute.

## **3. Individual dispute**

### **Article 30.**

Individual dispute may be tried before an arbiter, in accordance with provisions of this law if the subject of dispute is:

- i) termination of employment contract,
- ii) payment of the minimum wages.

If a court procedure between the parties in dispute based on the same facts and based on the same legal ground is in progress, the parties in dispute shall jointly file for stay of proceedings.

### **1) Proceedings before the arbiter**

#### **Article 31.**

Arbiter shall schedule a hearing three days after receipt of the motion and enclosed documentation at the latest. He shall notify the parties in dispute accordingly.

The hearing shall be conducted in the presence of parties in dispute and arbiter.

Arbiter shall open the hearing and invite all invited persons to participate.

If one of the parties in dispute is unjustifiably absent from the hearing, the arbiter may conduct the hearing in absence of such party, taking into account documentation submitted by such party.

Each party in dispute may withdraw the motion for hearing before the arbiter until the day of the hearing at the latest.

### **Article 32.**

The hearing shall be open to public.

Arbiter may decide to conduct the hearing before closed door upon request of parties in dispute with justified reasons for such request.

### **Article 33.**

Arbiter shall chair the hearing, take depositions from the parties in dispute and other relevant persons in the process, present evidence and take care that all facts relevant for decision making be presented.

Parties in dispute are entitled to presenting their respective cases on the subject of dispute and respond to statements of the other party in dispute.

Arbiter shall decide whether the hearing shall be adjourned, *ex officio* or upon request of a party in dispute.

In case referred to in para 3 above, Arbiter shall schedule a hearing five days after the initial one has been adjourned, at the latest.

### **Article 34.**

Arbiter may engage an expert witness.

Provisions of this law relating to challenge of arbiter shall also apply to expert witness.

### **Article 35.**

Parties in dispute shall be entitled to closing statement at the hearing.

If the arbiter finds the subject of dispute discussed sufficiently to be able to rule, he shall close the hearing.

### **Article 36.**

Arbiter shall pass the ruling 30 days after the initial hearing at the latest.

The ruling shall contain:

- 1) First name, family name and address, or name and seat of parties in dispute;
- 2) Decision
- 3) Rationale,
- 4) Date of issuing the decision,
- 5) First name, family name and signature of the Arbiter.

This decision cannot be appealed against.

Decision becomes valid and is enforced on the day when it is delivered to the parties in dispute. If, however, the decisions stipulates that an action that is the subject of dispute can be performed within a set term, the decision become executive with expiry of that term.

#### **Article 37.**

Parties in dispute shall notify the court on the decision passed if the stay of court proceedings was requested.

### **IV. CONCILIATORS AND ARBITERS**

#### **1. Selection of conciliators and arbiters**

#### **Article 38.**

Any person meeting the eligibility criteria listed below can be selected to be conciliator or arbiter:

- i) citizenship of Serbia and Montenegro
- ii) university degree and minimum 5 yrs of experience in the field of labor relations,
- iii) no history of conviction to a non-suspended sentence to no less than 6 months or conviction for a crime that makes him unworthy of the office.
- iv) that he is worthy of the office of conciliator or arbiter:

#### **Article 39.**

Conciliators and arbiters shall be recruited by a public announcement placed by the Agency.

Selection of conciliators and arbiters shall be made by the Panel for selection of conciliators and arbiters (hereinafter: Panel).

The Panel shall be composed of two representatives of the Government, two representatives of representative trade unions and two representatives of representative associations of employers set up for the territory of the Republic of Serbia.

Representatives of the Government shall be appointed by the Government, while the Social-Economic Council set up for the territory of the Republic of Serbia shall appoint representatives of Social-Economic Council upon proposal of representative trade unions and representative associations of employers – members of the Council.

The Chairperson shall be selected from the Panel members.

## **Article 40.**

The Panel shall pass a decision on selection of conciliators and arbiters 15 days after the deadline for application.

The decision shall be considered final when a two-third majority of the Panel endorse it.

The decision is final and only administrative procedure may be filed to contest it, in accordance with the Law.

## **2. Term of office**

### **Article 41.**

Conciliator and arbiter shall be appointed for a four year term and may be re-elected.

The term referred in para 1 above starts when the decision on the appointment becomes valid.

## **3. Directory**

### **Article 42.**

The capacity of conciliator or arbiter is acquired with entry into the Directory.

Based on the decision on selection of conciliators or arbiters the Agency Director makes a decision on entry into the Directory.

## **4. Content of Directory**

### **Article 43.**

The Directory is kept by the Agency.

The Directory shall contain the following information:

- i) first name, family name of conciliator or arbiter;
- ii) address,
- iii) educational level/qualifications;
- iv) name and seat of employer, if employed;
- v) number and date of decision on selection/appointment;
- vi) number and date of entry to and deletion from the Directory.

#### **Article 44.**

Conciliator and arbiter shall notify the Agency on any change of data referred to in Article 43, para 2, points ii) and iv) of this law three days after effectuation of the change at the latest.

### **5. Deletion from the Directory**

#### **Article 45.**

The capacity of conciliator or arbiter is terminated by deletion from the Directory.

Conciliator or arbiter shall be deleted from the Directory:

- i) if it subsequently appears that the conditions stipulated in Article 38 above were not fulfilled;
- ii) if requirements referred to in Article 38, points i), iii) and iv) of this law are no longer fulfilled;
- iii) if, after a term for which he is elected, the arbiter/conciliator is not re-elected;
- iv) if he refuses to pursue advanced training;
- v) if he performs his duties with lack of competence and lack of dedication;
- vi) if he fails to comply with duties entrusted by the Agency;
- vii) if he unjustifiably prolongs or stalls the amicable resolution of labor dispute;
- viii) upon personal request;
- ix) due to loss of business capacity;
- x) due to death.

#### **Article 46.**

Request for deletion from the Directory may be submitted by Social-Economic Council founded for the territory of the Republic of Serbia or one of the participants in the Council.

Agency Director shall issue a decision on deletion from the Directory 15 days after the request has been submitted or circumstances relating to Article 45 para 2 of this law have been revealed, at the latest.

In cases referred to in Article 45 para 2 points iv) through vii) of this law the Agency Director passes decision on deletion in agreement with the Social-Economic Council founded for the territory of the Republic of Serbia, except in cases when the request was filed by the Social-Economic Council.

Decision on deletion from the Directory is final, and administrative procedure may be started to contest it, in accordance with the law.

#### **Article 47.**

Decision on entry in or deletion from the Directory shall be published in the Official Gazette of the Republic of Serbia.

### **6. Challenge of conciliators and arbiters**

#### **Article 48.**

A party in dispute may challenge the conciliator or arbiter under the following conditions:

- i) if he represents one of the parties in dispute or has represented one of the parties in dispute in the last five years;
- ii) if he is direct descendant or ancestor in any degree or side relative to the fourth degree, or if the arbiter's spouse or in-law is relative to a second degree to any of the parties in dispute;
- iii) if he/she is in labor or membership relations with to any of the parties in dispute, or such relation existed in the last two years
- iv) he/she is affiliated with parties in dispute in any way whatsoever that may affect judicial impartiality

Arbiter and conciliator shall, *ex officio*, consider all reasons for the challenge in the course of the proceedings and shall notify the Agency Director accordingly.

The decision on challenge shall be passed by the Agency Director upon notification of the arbiter/conciliator and upon request of parties in dispute not later than 8 days after the reasons for the challenge have been disclosed.

In case of challenge, the process of amicable resolution of labor dispute shall be continued with appointment of a new arbiter/conciliator in accordance with the law.

### **7. Duties and rights of conciliators and arbiters**

#### **1) Duties of conciliators and arbiters**

#### **Article 49.**

Arbiters/Conciliators shall proceed fairly and to the best of their knowledge in order to resolve the dispute among the parties in dispute.

**Article 50.**

Arbiters/Conciliators shall pursue advanced training in the line of their work.

**Article 51.**

Arbiters/Conciliators shall notify the Agency regularly on starting, course and closure of the proceedings of amicable resolution of labor dispute.

**2) Rights of conciliators and arbiters**

**Article 52.**

Arbiters/Conciliators shall be entitled to remuneration for their work and reimbursement of the expense they incurred in the course of the proceedings.

Government shall define conditions under which right to remuneration and reimbursement of the expense can be claimed and the amount thereof.

Moneys referred to in para 1 above shall be provided in the Budget of the Republic of Serbia.

**Article 53.**

Arbiters/Conciliators shall be entitled to unpaid leave of absence during the time they arbitrate in the process of amicable resolution of labor disputes in accordance with this law.

**V. RECORDS ON CASES OF AMICABLE RESOLUTION OF LABOR DISPUTES**

**Article 54.**

Agency shall keep the records on amicable resolution of labor disputes. These records shall contain particularly:

- i) first name, family name and address or name and seat of parties in dispute;
- ii) first name and family name of conciliator/arbitrer;
- iii) subject of dispute;
- iv) date of initiation of proceedings;
- v) date and mode of dispute termination.

## **VI.TRANSITIONAL AND FINAL PROVISIONS**

### **Article 55.**

Government shall point the Agency Director 30 days after the enactment of this law at the latest.

Selection of conciliators/arbiters and their entry into the Directory shall be accomplished by December 31<sup>st</sup> 2004.

Provisions of this law relating to the procedure of amicable resolution of labor disputes shall be applied as of January 1<sup>st</sup> 2005.

### **Article 56.**

This law shall come into force eight days after publication in the Official Gazette of the Republic of Serbia .