Chapter 12
Mediation and Conciliation in Collective Labor Conflicts in Romania

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The Case

In a non-unionized private company active in the banking industry, a collective labor conflict was notified by the employee representative for all its 800 employees, as a result of a refusal on behalf of the employer to accept a number of employee requests and the consequent impossibility to reach a consensus regarding the collective labor contract. The employee representative notified the territorial work inspectorate and requested the conciliation of the labor conflict, as a mandatory preliminary part in a possible escalation. Two meetings and one month were necessary for a satisfactory resolution of the conflict.

Conciliation was initiated, and was conducted by a representative appointed by the Ministry of Labor. Negotiation meetings took place at the company headquarters, with three representatives of the employees, three representatives of the employer (the HR director, a legal counsellor and a conformity officer), and the conciliator appointed by the Ministry of Labor. Among their various requests, employees mainly required higher salaries and benefit packages (e.g., medical insurance). The representatives of the employer rejected all these requests and required that the provisions of the previous contract are kept in the new one. Their main argument was an economic one: they showed that if these requests were granted, the company might become insolvable and layoffs would be a direct consequence. They also showed that job security was high and that there was a clear commitment from the management to keep all current employees. Building on the economic calculations provided as arguments

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by the employer, representatives of the employees proposed a scheme of extra performance-based payments for those employees that would show superior performance, a scheme that is also dependent on the general economic situation of the company. The employer accepted this proposal, and the conflict was declared solved during conciliation in the records of the Ministry of Labor.

12.1 Introduction

Mediation in labor disputes was introduced for the first time into the Romanian legal system through the Law no. 168/1999—a law specifically focusing on the settlement of labor disputes. A few years later, because of a stringent need to align Romanian practices with EU legislation, mediation as a profession was officially regulated in 2006 by the Law no. 192.

Individual labor conflicts are tackled and solved by the Mediation Council (an institution founded by the abovementioned Law no. 192), but not collective labor conflicts, which have a special character. The provisions of art. 73 of the Law no. 192/2006 on mediation and the profession of mediators are thus applicable for the mediation of individual labor conflicts, while collective labor conflicts are tackled by the employees of the Ministry of Labor, who are not necessarily accredited by the Mediation Council.

It should be noted that the various social partners still grapple with the issue of social dialogue, at least regarding the definitive answer regarding the responsible institution. Initially, the Ministry of Labor had this responsibility, but in 2017 the Ministry of Social Dialogue was established as a separate institution and took over the issue of social dialogue. Currently, the Ministry of Social Dialogue merged with the Ministry of Labor again—the decision to have a separate institution dedicated to social dialogue only lasted for a year. The position of the ministers involved was that from an organizational point of view it makes no sense for the two institutions to be separate Petrea (2018), the Government did not seem to be able to make up their minds where to put Social Dialogue. All these ongoing changes, that are a reflection of the unstable political background and of the continuous and never-ending reforms in Romania, contribute to the apparent confusion.

The number of collective labor conflicts is quite small in Romania, and this reflects also on the development of those institutions that have a mission towards the management of these collective conflicts. According to representatives of the Ministry of Labor, no more than 65 (and usually significantly less) collective labor conflicts are recorded every year. In 2017, for example, only 21 collective labor conflicts were registered with the Ministry. The Ministry of Labor has made several proposals for the creation of a government-run (and funded) Office of Mediators, with an organizational chart of 25 employees, but given the small number of reported labor

conflicts, the Ministry of Finance repeatedly refused to approve the needed budgetary resources for such an institution.

In absence of such an institution, social dialogue takes place in the legal framework given by labor law, more precisely Law no. 53/2003 (the Labor Code), and Law no. 62/2011 (the Law of Social Dialogue). The Law of Social Dialogue postulates the main regulations regarding collective labor relations, and has had a major impact on how these relations unfold. This law was however seriously criticized by a significant part of Romanian society. Since being recently approved, in 2011, this law has already faced a significant number of changes (Vasiliu, 2016), and still seems to demand acute amendments, at least accordingly to the representatives of Unions and Patronages. Besides the legal steps taken in this respect, a petition for amending the law has begun (https://campaniamea.de-clic.ro/petitions/vrem-o-lege-a-dialogului-social-mai-buna-pentru-angajati).

Changes are also needed to bring current labor and Law of Social Dialogue into compliance with the core Conventions of the International Labor Organization (ILO). The very adoption of this law was criticized: it was adopted by the government directly, circumventing the normal parliamentary procedure, a fact that was appealed by opposition parties in the Constitutional Court. Adoption of the Law of Social Dialogue in 2011 has been done without any impact study. Impact studies have not been made by legislators nor post-implementation (Guga & Constantin, 2015).

Social partners also appealed this law, by showing that several of its provisions (e.g., the conditions for a formal declaration of a strike) were not supported by impact studies, and that any and all comments and suggestions made by the Economic and Social Council and the International Labor Organization were ignored. A later section of this chapter will delve into these suggestions for change.

In conclusion, according to both trade unions and employer representatives, the current number of collective labor conflicts in Romania is quite small—an effect not so much of intensive and efficient social dialogue, but rather of a very restrictive legislation, that only defines a conflict as "action" (see below), and that makes any formal trigger of such a collective conflict a difficult and untenable endeavor.

The overwhelming feeling regarding the current state of affairs in the way collective labor conflicts are solved in Romania is one of discontent; this will be visible on the details below. However, it is not so much dissatisfaction with the conciliators or mediators, as it is with the general state of affairs, as governed by the current law: it enforces a legalistic view on collective labor disputes, and developed a context in which it is so difficult to meet in a specific case all the critical components of a collective labor conflict, that in the end we can easily say that Romania has no 'recognized' collective conflicts and no connected system of mediation for these conflicts.

12.2 Characteristics of the System

According to the Law of Social Dialogue, a collective labor conflict is defined as a labor conflict that occurs between employees and employer in connection with negotiations on either labor contracts or collective labor agreements. The commencement, development and conclusion of negotiations on these contracts and agreements are a responsibility of the employer, but require the participation of employees. The definition of collective labor conflicts also emphasizes their "collective" characteristic: they always concern a community of employees or civil servants (Law of Social Dialogue, 2011).

Collective labor conflicts are acknowledged as employee rights, and they may be legally started in the defense of the collective economic, professional or social interests of the employees. Collective labor conflicts are strongly related to the direct actions, i.e. to the right of employees to strike. The right of employees to start a conflict with the employer is considered to be a consequence of their fundamental rights, namely the right to work, the right to have a wage, the right to rest, the right to form trade unions, and the right to have social security. When these rights are considered to be at risk, they may be defended by triggering collective conflicts, including strikes.

The law on labor disputes (no. 168/1999) states that collective labor conflicts may be divided into conflicts of rights, that arise from the violation of an existing right of one or both of the parties involved, and conflicts of interest, that arise following a difference of opinion appeared in the collective bargaining phase between the parties (García, Pender, Elgoibar, Munduate & Euwema, 2015). Conflicts of rights are resolved in court, based on the rules of labor jurisdiction. Unlike conflicts of interest, conflicts of rights are not resolved through conciliation, mediation, arbitration or strike. However, the Law of Social Dialogue no longer recognizes the difference between "conflicts of interest" and "conflicts of rights", and only uses the notion of "collective labor conflict" (Paslaru, 2011).

According to, Art. 128 from the Law of Social Dialogue, collective labor agreements may be negotiated at the level of units, groups of units and sectors of activity.

Currently, Romania has no collective labor agreements at the national level and no sectorial agreements, because none could be concluded. There are however 14,343 collective labor agreements at the unit level, of which 12,327 were negotiated by work councils, and 2,016 by representative trade union organizations. The result is that less than 28% of Romanian workers are covered by a collective labor contract today, compared to 100% on 5 May 2011 (Hossu, 2015). An indirect result is the fact that, because there are no collective contracts at the sector level, there are also no collective labor conflicts at the sector level, as a collective labor conflict can only be triggered in connection with a collective labor contract at that same level.

According to Romanian law, collective labor conflicts may be prompted in the following situations:

– the employer organization refuses to start negotiating a collective contract or collective agreement;

– the employer organization does not accept the collective claims made by the employees;
– the parties do not reach an agreement on a contract or collective agreement until the date agreed for completing the negotiations.

During the term of a contract or collective agreement, employees may not trigger collective labor conflicts. Even if employee complaints may occur and accumulate while a collective labor contract is in place, the conflict itself cannot be triggered while the contract is in place but only after its expiration and only in the negotiation phase of the new contract (and as a result of lack of agreement on such a negotiation). From a legalistic point of view, this means that the law does not acknowledge collective labor conflicts for organizations where a collective labor contract is in place.

A significant issue lies in the fact that a collective contract can be adopted by an organization that has at least 21 employees. According to the National Institute of Statistics, in 2014, 88.6% of all Romanian companies were micro-enterprises (under 10 employees), and small enterprises (less than 50 employees) that had a weight of 9.4%. Within these premises, a collective agreement practice is almost null. At the level of the activity sectors, there is no collective labor agreement, according to the statistics of the Ministry of Labor and Social Justice (Frumosu, 2017). Strikes, that are considered parts of such collective labor conflicts, are also regulated: some categories of employees are not allowed to strike and others have only limited rights in this respect. The professional categories that may not declare a strike are clearly defined: prosecutors, judges, military personnel and staff with special status within the Ministry of National Defense, the Ministry of Administration, the Ministry of Justice and its various structures, including the National Penitentiary Administration, the Romanian Intelligence Service, the Foreign Intelligence Service, the Special Telecommunications Service, and the staff employed by foreign allied armed forces stationed on the territory of Romania. In order to not endanger human life and health, and to ensure continuous and safe operation of a number of facilities, a number of categories of employees may only strike with the condition that at least one third of the normal business activity is upheld. This is the case in the sanitary and social welfare systems, telecommunications, radio and television stations, rail transport, public transportation and public sanitation units, the supply of gas, electricity, heat and water. The same one-third rule is also imposed on employees working in units of the national energy system, operating units in the nuclear sector, in so-called "continuous fire" units (Beligradeanu, 1990).

12.2.1 Some Characteristics of the Current Law of Social Dialogue

Critique towards the Law of Social Dialogue (Law no. 62/2011) is explicit and very negative, both from labor unions and employer associations, and from international organizations (e.g., General Director of the International Labor Organization reacted

to this law; see Ryder, 2013). The critiques have emerged from both individual discussions and official documents. For example, a 60 pages document with suggestions for amendments was submitted by labor unions (Project of the confederation of employers and unions to amend the Law of Social Dialog, 2012), and a dedicated study was conducted in 2013 by the ILO (Hayter, Vargha, & Mihes, 2013). These organizations claim that with the adoption of the current law of social dialogue in 2011, a number of major and generalized dysfunctions in terms of collective bargaining and negotiations have appeared, as a direct consequence of the structural incompatibility (that is unfortunately prescribed by this very law), between labor unions and employer associations. The law also prescribes more difficult conditions for labor unions to form confederations and associations, and excludes from collective bargaining and negotiation almost 2 million employees from almost 450.000 companies (Hayter et al., 2013).

According to The European Trade Union (ETUI), an independent research and training center of the European Trade Union Confederation, the major changes of the legislation, involved the following (Clauwaert & Schömann, 2013):

- national-level agreements: dissolution of the national collective agreement (as a reference point for collective bargaining at all levels); collective agreements, previously negotiated for each branch of the national economy, have been replaced by sectoral collective agreements;
- timing: collective bargaining took place annually and the national agreement was made for 4 years, now there is no longer a compulsory agenda for negotiations, only the minimum and maximum duration of a collective agreement is fixed (12–24 months);
- representativeness criteria: the law sets out representativeness criteria for social partners at all levels (company, groups of companies, sectoral and national); previously 15 persons working in the same branch or profession were required to set up a trade union, now 15 workers in the same company are required;
- limitation of negotiation power: a trade union is considered representative and is allowed to negotiate in a company only if at least half plus one of the company's workers are affiliated to it (compared to one-third under the previous legislation), only one trade union can be representative in one company compared to up to three under the old legislation; if there are no representative unions in a company, because there are not enough members, negotiations can be carried out by the federation to which the existing union belongs and if there is no union at all, negotiations will be carried out by employee representatives only.

While possibly also generated by other variables, the number of unionized workers has dropped considerably since 2011, reflecting some discontent with the capacity of unions to meaningfully represent their members. For example, Dragoş Frumosu, President of the General Confederation of Labor-General Union of Trade Unions of Romania (CGM-UGSR), mentioned that the trade union movement has faded out in private businesses in recent years.

The Law of Social Dialogue is equally applicable to the private and the public sector. Unions are strongest in the public sector. While no proof of this has ever been

legally upheld, the general feeling (some stakeholders argue for "common knowledge") is that private companies actively take steps to discourage union participation, with very good success towards this goal: union participation is significantly weaker in private companies, especially in the service sector. The largest number of conflicts therefore appear in the public sector, or in large private companies, where unions are still active and strong.

A direct result of this situation in which unions disappear, especially in private companies, is however an increase in spontaneous labor conflicts: conflicts that are not mediated, but explode directly in a full-fledged confrontation, without the possibility of the various social partners to explore an agreement in advance.

Another visible effect of this new law was also immediately felt by employers—from the 13 employer confederations representative at a national level in 2010 (the largest number of employer confederations representative at the national level in the entire European Union, according to Guga & Constantin, 2015), only 3 remained representatives in 2015. A particular situation in the public sector, as opposed to the private one in the application of the Social Dialogue Law, refers to the subject of the negotiation. In the public sector, collective bargaining could really be seen as a simple communication exercise between the social partners if we take into account two aspects: the legal terms that do not allow the negotiation of salary rights (wages in the public sector are established by law) and the fact that the wage claims represent the highest weight in negotiations according to the statistics. Restricting wage bargaining in the public sector results in negotiations focusing on other areas (working conditions, work organization, working time, holidays, social rights) (Badoi, 2013).

12.2.2 Participants in Social Dialogue

Social dialogue is considered a direct way of exercising economic and social democracy. The three participants in social dialogue acknowledged by Romanian law are the employees, represented by trade unions, the employer organizations ("patronates") and the government. The first two are especially important in this regard. In those cases, when a trade union is not present in an organization, a Work Council (i.e., an elected body of employee representatives who deal with the management) has many of the rights of trade unions (except the right to strike), and may be consulted in cases that may escalate towards a collective labor conflict.

12.2.2.1 Unions

The main legal precepts regarding trade unions are contained in the Constitution, the Labor Code, the Union Law (Law no. 53/2003), and the law on collective labor contracts (Law no. 130/1996). According to the Labor Code, "unions are independent legal entities, without patrimonial purpose, established for the purpose of defense and promotion of collective and individual rights, as well as the professional, economic,

social, cultural and sports interests of their members" (art. 217, paragraph 1). Unions are independent of public authorities, political parties and employer organizations. Their role is explicitly non-political, i.e., they do not defend the political interests of their members. They are self-governed within the limits of the law.

An alternative, in case of organizations that don't meet the criteria of being constituted in unions, are the works councils. According to the Labor Code, in the units where exist more than 20 employees, the interests of the employees can be promoted and defended by their representatives, elected and mandated specially for this purpose. The election is made by voting at the general meeting of the employees, with the vote of at least half of the total number of employees. Employee representatives can't carry out activities that are recognized by law exclusively to trade unions. The number of elected representatives of the employees is established in agreement with the employer in relation to the number of employees. Work councils are important participants in social dialogue and give employees a common voice when unions are not present; they allow common bargaining and common promotion of workers' interests. However, work councils are not popular among unions, and are often seen as competitors: "In most cases, the management of the company is involved in the choice of work councils, even if the law has clear provisions in this respect" (Frumosu, 2017).

12.2.2.2 Employer Organizations ("Patronates")

The main legal regulations regarding employer organizations are contained in the Labor Code, the law of employer organizations (Law no. 356/2001), the law on collective labor contracts (Law no. 130/1996), and the Government Ordinance on associations and foundations (Law no. 26/2000).

According to the Labor Code, employer organizations are autonomous, non-political, organizations, set up as legal persons under private law, without a patrimonial purpose. They are also self-governed, within the limits of the law.[1]

12.2.3 Means of Resolving Labor Disputes

Romania currently acknowledges under the law three different ways to resolve collective labor conflicts: conciliation, mediation and arbitration (Fig. 12.1).

A brief description of these practices is given below.

An important note is however necessary here, before delving into details. We emphasize the fact that mediation and arbitration do not exist in Romanian practice at

[1] Employer organizations may be founded or joined by "patrons", i.e. employers who employ paid workers. Employer organizations are grouped by economic activities and are organized on sections, divisions, and branches at the national level. Employer organizations may further associate to form unions, federations, confederations or other associative structures.

Fig. 12.1 Succession of methods to solve collective labor disputes (Law of Social Dialog)

all, i.e., no cases of mediation or arbitration have been registered with the authorities. As the processes do not exist in practice, we will only describe them based on the way in which they are reflected in the law.

12.2.3.1 The Conciliation of Conflicts

Conciliation is regulated by the law no. 168/1999 (the special law on labor disputes) as a mandatory first step in resolving collective labor conflicts. If an attempt at a settlement of the conflict through conciliation is not made, the parties are not allowed to call for mediation or arbitration, and employees cannot trigger a strike. Initially, conciliation consisted of a direct dialogue between the management, and representatives of the employees (e.g., trade union delegates or works councils), aimed at resolving the conflict. However, in light of early experience with this provision, direct conciliation was considered inefficient; a formality that often prolonged the duration of the process unnecessarily. Direct conciliation between management and unions was therefore renounced and was instead replaced with the current approach of conciliation through the Ministry of Labor (e.g., civil servants).

Currently, if a conflict is triggered, the union or, where applicable, the representatives of the employees, of the employer or both, notify the Ministry of Labor through the geographically corresponding Territorial Directorate for Work, in order to begin the conciliation process. The Ministry of Labor will designate a delegate to attend the conciliation of the conflict. The union or, where appropriate, the employees, choose a delegation of 2–5 people to participate in the conciliation process. The manager of the company will advocate the employer's point of view, but the management may also designate a delegation of 2–5 representatives to participate in the negotiations (Law of Social Dialog, 2011).

The role of the Ministry of Labor during the conciliation process is limited to the facilitation and guidance of the other parties, and the conciliator has no legal competence to decide the cessation of the conflict. Conciliation is therefore a direct negotiation between the main parties (employees and employer), assisted by a third party (the Ministry delegate). The following results are possible at the end of the conciliation process:

– in the case of a complete agreement on the settlement of claims, the parties will finalize their collective work agreement and, thus, the conflict will be settled;

– in the case of a partial agreement, the employees are the only ones who may decide if the reasons for the conflict persist; as a result, they may accept the outcome of the conciliation, and the conflict will thus end even if the agreement is not complete, but they may also refuse to accept the partial agreement as an adequate settlement and in this case the conflict will continue;
– in case no agreement is reached, the conflict continues, passing to the subsequent stages of possible settlement (i.e., mediation or arbitration, see below).

The law prohibits successfully concealed claims to resume and be the subject of a new conflict.

12.2.3.2 The Mediation of Conflicts

Conflict mediation is a comparatively new legal institution, introduced in Romanian practice less than 20 years ago (Law no. 168/1999). Among other forms of mediation, the mediation of labor conflicts is specifically regulated. In this case, conflict mediation is introduced to prevent the triggering of strikes unless and until efforts have been made to solve the conflict in other, more cooperative ways.

If the conflict has not been settled following the conciliation organized by the Ministry of Labor, the parties may decide by consensus to initiate the mediation process. Mediation is a voluntary process in which the parties may enlist if they seek the termination of conflicts. The essential role in the mediation procedure belongs to the mediator (i.e., the person selected by the two parties to conduct the process).

Conciliation and mediation share some similarities, but also some striking differences. Conciliation is a mandatory step to resolving conflicts, while mediation is optional, and depends on an agreement between the parties regarding the appointment of a mediator. In the case of mediation, the parties select the mediator from a list provided by the Ministry of Labor, while the conciliator is a civil servant, a delegate of the Ministry and cannot be chosen by the parties. Conciliation is free of charge, while mediation requires that the mediator is paid.

In the case of conciliation, the parties are the ones who develop the solution. The conciliator does not propose solutions but facilitates the necessary discussion for conflict settlement. The main difference between the role of conciliator and that of mediator is in fact their degree of involvement in finding solutions for the conflict. The mediator is called to intervene more actively with proposals, recommendations and points of view, while the conciliator will only encourage the parties to seek their own solutions. In fact, mediators have an obligation to state their opinions on any claims made by the parties: after confronting both parties, the mediator is required to draft a report on the situation of the conflict, stating his/her opinion on any outstanding claims. The report will be sent to each of the parties and to the Ministry of Labor, and will propose a way of settlement. If the proposed settlement reaches a consensus and is acceptable for both sides, the outcome of a mediation process is usually sustainable, and the conflict ceases. Otherwise, if the mediation results in a failure, the conflict continues with one of the next stages prescribed by the law. Also,

if the parties fail to agree on a mediator, the mediation procedure is terminated, and the parties may move forward and reach arbitration.

12.2.3.3 The Arbitration of Conflicts

During a collective labor conflict, the conflicting parties may decide by consensus to submit their demands to an arbitration committee. Arbitration cannot occur before conciliation, which is a compulsory phase. Arbitration may only be initiated after the failure of conciliation, and is optional.

The arbitration panel is composed of three arbitrators appointed as follows: (a) an arbitrator appointed by the management, (b) an arbitrator appointed by the trade unions or, where appropriate, by the representatives of the employees, and (c) an arbitrator appointed by the Ministry of Labor.[2]

Although the law provides three different ways to resolve labor disputes (conciliation, mediation and arbitration), and although from an analytical perspective their usefulness and differences are clear, interviews with social partners, such as unions, patronates etc., have shown that in practice social partners, largely ignore mediation and arbitration. In fact, once a collective labor conflict is registered with the Ministry of Labor, a civil servant is officially appointed to handle the conflict, to act as a conciliator, and to also coach the parties through the process. This appointment should only be typical for the conciliation phase, which is a preliminary phase, but in most cases this is where third party involvement stops: mediation and arbitration are hardly ever requested, and a failure of the conciliation leaves the conflict open to escalation.

[2] A list of representatives of the Ministry of Labor who may be appointed as arbitrators in such cases is determined by the Ministry in consultation with trade unions and employer associations. These individuals must have a higher education degree and at least five years of experience in arbitration. The arbitration panel may only be formally constituted after the conflicting parties notify their request for arbitration in writing and register this request with the Ministry of Labor. Where several parties have common interests (e.g., several trade unions or several employer representatives), they may choose (if they so agree) a single arbitrator. If an arbitration panel is appointed, the chair of the panel is also formally appointed. In order to solve the conflict, the arbitration panel may request written explanations on the subject of the conflict and may order the parties to further submit any required evidence that the panel would need to reach a conclusion. For their work in solving the conflict, members of the arbitration panel receive an honorarium of arbitration which is paid in equal split by the parties to the conflict. If an agreement on the fees is not reached by the parties, the honorarium is determined by the Ministry of Labor, based on the proposals of the various parties. After the arbitrators decide how to resolve the dispute between the parties, this solution is formal and enforceable by law—the parties are *obliged* to abide by this solution. The board is led by a Chair who is either appointed when the board is constituted, or, if not appointed, elected by the members. The board makes decisions by the absolute majority of its constituent members; consensus on the solution is not needed.

12.2.4 Evaluation of Stakeholders on the System

The general opinion of the various stakeholders regarding the current system, its legal structure and practices, is that these are largely dysfunctional. In fact, not only are there no funds and no human resources specifically allotted for these activities, but responsibilities to this effect are unclear.

Mediators and officials in the Ministry of Labor who act as conciliators and legal auditors in collective labor conflicts decry the lack of consistent and continuous training (although an important training program that may solve this issue for the time being was recently launched; see below).

Labor unions also condemn the fact (and employer associations accept this position as correct) that the law is so restrictive that few if any collective labor conflicts have ever been accepted as legal. Ministry of Labor representatives mentioned that more than 70% of conflicts are solved after the conciliation—but this may of course mean that they are only solved through restriction, i.e., the conflict is declared illegal and thus "solved" artificially by refusing the right to escalate.

12.3 Characteristics of the Conciliators or Mediators and the Third Party Procedures

Requests for conciliation, mediation or arbitration of labor disputes are solved through the involvement of officials from the Ministry of Labor. These are public servants, who, however, have other primary day-to-day responsibilities besides the occasional mediation process, and who are only appointed in such disputes as an exception and extension to their usual scope of work.

We note that these employees of the Ministry of Labor who act as mediators in collective labor disputes are not necessarily accredited by the Mediation Council. Some of them did go through mediator's training and are accredited by the Council, but this is not a mandatory requirement, and for those who are trained as mediators, accreditation courses were not financially supported by the Ministry of Labor but by themselves. It should also be noted that the role played by the ministry representative in a conflict is not geared towards facilitation and conflict resolution, but is rather a formal legal role, with the aim of ascertaining whether the legal conditions of the conflict are met. If these legal conditions are not met, as it appears to be in most cases, the conflict is declared solved ex officio. One could therefore argue that mediator training is not required for these public servants, as they formally act as legal auditors and not as conciliators or mediators.

Currently, the Ministry employs 40 civil servants who may act as conciliators/mediators, and who have been trained during the past 15 years in various financed projects, usually international projects in which the Ministry has been a partner; these have usually been trained based on international practices by international trainers. The National Agency of Employment has also conducted a number of training pro-

grams on mediation; such training programs have been certified by the Mediation Council, and have been conducted by Romanian trainers. Notably, social partners (e.g., labor unions) were involved in these national trainings, which were considered effective, but unfortunately notably few.

The Ministry of Labor has lately launched another important program, funded through the EEA and Norwegian Assistance Grants, in order to train specialists in the mediation of collective labor disputes and collective bargaining. Trainings are delivered by the Directorate of Social Dialogue in collaboration with the National Norwegian Mediator Council, based on a partnership with trade unions and employer representatives.

12.3.1 Evaluation by Stakeholders of the Conciliators/Mediators and Third Party Procedures

It is difficult, if not impossible, to talk about the effectiveness in practice of an almost non-existent system. And, indeed, for all practical reasons, the mediation system is not functioning well in Romania.

The major problem mentioned by union representatives is that: "*In Romania, almost 95% of companies have less than 15 employees, so 1.2 million Romanians are not unionized and find it in principle impossible to do so, according to the Law of Social Dialogue. Almost 66% of employees are not protected by a collective labor contract. Almost 85% of collective labor agreements are signed not in trade union negotiations, but with the representatives of employees (works councils), who are most often directly appointed by the management. If there were 17 sector-level collective agreements before 2011, currently there are none.*"

Works councils are more sanguine on this topic. Exactly because of the current law actually interdicting unionization, work councils are the only real chance of workers to have a collective voice in interactions with the management. They seem to be efficient in doing this, and take the current status of conciliation in Romania more in stride, mentioning that: "*It would be bizarre to claim lack of satisfaction with the efficiency of a specialist (employee of the Ministry) in a process that he solves admirably, only because the logic of the process is faulty*."

Employer representatives consider that: "*In Romania, the main problems are the current provisions of the Law of Social Dialogue—this law has practically stopped social dialogue*".

12.3.2 Evaluation by Stakeholders of the Conciliation Process

The conciliation process in Romania is guided by the guidelines of best practice issued by the International Labor Organization (ILO). The ILO defines conciliation as "the practice by which the services of a neutral third party are used in a dispute, as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution" (Foley & Cronin, 2015). The neutral third party has a critical role under this definition: contributing to the conversion of a two-party confrontation into a three-party exploration of solutions.

Conciliators are perceived by the conflicting parties (unions and employer organizations) as being very diverse, especially in light of the fact that Romanian practice lacks a specific protocol or prescribed procedure they would have to follow. Conciliators have each their own preferred style, a reflection of their own personality, professional background and culture.

In order to be effective, conciliators need to understand their role, to develop the necessary skills to be effective, and to maintain good relationships. The development of those skills, including those that lead to the development and maintenance of good relationships with the mediated parties, is generally considered satisfactory by the interviewed representatives of union and employer organizations.

However, in terms of the desired attitudes, things are different. The labor union representatives interviewed in our study have repeatedly commented that the desired attitude (e.g., the expected attitude of impartiality and confidentiality) is still largely lacking. This is attributed to them being public servants employed by the Ministry of Labor. As such, they are not accountable to the stakeholders that they serve, but to the government that they represent, and are oftentimes perceived as not being impartial and as furthering an agenda. We present below some illustrative quotes: "*The competence of conciliators is only based on knowledge of the law and not on interaction with the parties; this is sometimes positive, because we have met social dialogue partners who did not know the law in detail*", "*How can we talk about the effectiveness of a conciliator if he just has to draft a set of minutes and has no other responsibility?*", "*We cannot say that the conciliators do not do their job, the problem is that their job is restricted—they are not allowed to actually have a say in the process*".

12.4 Effectiveness of the System

12.4.1 Evaluation by Stakeholders of the Effectiveness of the Mediation

The effectiveness of the system is assessed in widely divergent manners by the various partners. Officials of the Ministry of Labor consider that Romania has a highly efficient mediation system and, more general, highly efficient ongoing social dialogue, an efficiency that is illustrated by the very few registered collective conflicts. The Unions especially consider that the low number of registered collective conflicts is rather due to the badly structured Law of Social Dialogue (see above), which basically blocks the legal inception and formal declaration of any collective labor conflicts.

Specifically to conciliation and mediation, the Ministry of Labor considers that involvement in any cases so far has been extremely effective, and cites in support of this position the closure of over 70% of the notified collective labor conflicts as a direct result of conciliation/mediation. The social partners consider however that all that is done by the representatives of the Ministry of Labor in such situations, is not more than to decide on the legal status of the conflict and register the legality or illegality of the situation. The role of the conciliator in such cases is to bring the parties together and ensure a constructive dialogue between them: this is not the case in practice, because conciliators exclusively focus on the legal status of the conflict. If in a specific case the conflict is not formally acknowledged as such, unions will be discontent, and if it is, employers will be equally discontent. Facilitation between the two parties is, according to the representatives of the various social partners, not attempted by conciliators—instead they have an excessive legalistic focus, looking only at legal aspects.

12.5 Conclusions

Given the current legal prescriptions of the various Romanian laws governing collective labor conflicts, both the Ministry of Labor and the social partners are reasonably content with the conciliation process and the effectiveness of the conciliators. Conciliation seems to be reasonably well handled by the appointed conciliators, who after all only assess and register if the conflict is legal or not.

Relatively good personal relationships are visible both between the Ministry officials and labor unions and the Ministry officials and employer organizations—a number of common institutional projects have been initiated and efficiently conducted in time between these various partners (e.g., training of labor union workers by the Ministry). Indeed, as one of the leaders of a large labor union confederation remarked, it would be bizarre to claim lack of satisfaction with the efficiency of a specialist (employee of the Ministry) in a process that he resolves admirably, only

because the logic of the process is faulty. Dissatisfaction in any of these social partners is therefore not with specific persons who are involved in this process, but with the general rules by which the process is conducted. The main problem in this regard are perceived to consist in the current provisions of the Law of Social Dialogue, that has „practically stopped social dialogue in Romania".

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