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MEDIATION – THE METHOD OF COLLECTIVE LABOUR DISPUTES RESOLUTION IN THE YUGOSLAV LAW

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Abstract. *Considered in this paper was a mediation mechanism, one of the methods for peaceful resolution of collective labour disputes in the Yugoslav law. Investigated were the contents and the purpose of the mediation procedure and the scope of its application. Organizational and functional rules on mediation in effect were critically analyzed. Considered were causes for sporadic use of mediation in the Yugoslav law and pointed out courses of further development of this procedural method, practical affirmation of which would stimulate development of labour and law relations and contribute to the establishment and stabilization of the "social peace".*

Key words: *collective negotiation, collective labour dispute, mediations, peaceful resolution of disputes.*

1. Reaffirmation of classical labour and law categories and institutes were brought about after leaving the self-government concept of labour relations and accomodating the Yugoslav labour law to the market economy conditions and standards of the international and comparative labour law. Of particular importance for the industrial relations democratization in Yugoslavia is the process of collective negotiation. Being desirous to contribute to the improvement of relations between the employees and the employer and in order to incite their dialog, the lawmakers of both the Federation and the Republics, the legislative competence of which in the filed of labour relations is divided[1], have restricted their normative authorizations and raised possibilities for the social partners, through collective agreements[2], to autonomously, on the basis of labour[3] regulate their

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[1] Pursuant to Article 77 Paragraph 7 of the Constitution of the Federal Republic of Yugoslavia, (Official Register of FRY, No. 1/92), the Federation is empowered to regulate only the *basics* of the labour relations, while it is the competence of the member republics to completely regulate labour and law field.

[2] Over the period prior to World War II, collective agreements were an important source of the Yugoslav labour law. Collective agreements signing was for the first time provided for by the *Statute on the Protection of Workers of the Kingdom of Yugoslavia* of 1922, while detailed regulations on the contents and effect of the

mutual rights, obligations and responsibilities.

The meaning of the collective negotiation consists in that the employees as a "weaker" party should provide more favourable working conditions for themselves as well as higher quantum of rights with reference to the level offered by the cogent law (favor laborem)[4]. At the same time, negotiating activity of the social partners enables, in a socially acceptable manner, to articulate a conflict of their interests, to establish necessary balance of interests in labour relations and to create conditions required for establishing and stabilizing "social peace"[5].

2. In the process of collective negotiation[6], the social partners, in spite of good will and readiness to compromise, sometimes do not succeed in matching contradictory interests and, by means of the collective agreement, to regulate, i.e. to reregulate (revise) mutual rights, obligations and responsibilities arising from employment. Also, it may happen that there occurs disagreement with regards to the contents and volume of certain collective rights established by the collective agreement or cogent labour-law norms. Disputes arising from such situations have the character of collective labour disputes because they occur between the working organizations and associations of employers and are concerned with their general collective rights and interests[7]. This type of labour disputes, which, in view of the subject, may be of legal or interest (economic, nonlegal)

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collective agreements were contained in the *Regulation on Establishing Minimal Wages, Collective Agreements Signing, Conciliation and Arbitration* dated February 12, 1937. In the post-war Yugoslavia, collective agreements were for years marginal institution because it was by cogent regulations that the law structure of labour relations was on the whole regulated. Collective agreements signing was permitted in the so-called private sector only. It was only after the federal *Statute on the Basic Rights out of Employment* had been passed in 1989 that legal conditions were created for the collective agreements to become an instrument of regulating labour relations in all the fields. (For details, see: Jovanović, P.: Radno pravo, /Labour Law/, Novi Sad, 1998, pp. 74-75).

[3] Article 71 of the Statute on the Basics of Labour Relations of the Federal Republic of Yugoslavia of 1996 (Official Register of FRY, No. 29/96); Article 119 of the Statute on the Labour Relations of the Republic of Serbia of 1996, Official Gazette of RS, No. 55/96 and Article 71 of the Statute on Labour Relations of the Republic of Montenegro of 1990 (Official Register of the Republic of Montenegro, No. 29/90)

[4] Article 42 of the Statute on the Basics of Labour Relations of the Federative Republic of Yugoslavia.

[5] For details on the substantial and procedural aspect of the collective negotiation in the Yugoslav law and the accompanying difficulties, see: Jovanović, P.: *Kolektivno pregovaranje kao način regulisanja radnih odnosa*, (*Collective Negotiation as a Method for Labour Disputes Resolution*), Pravni život, 11-97, Volume III, Series "Law and Reality", pp. 511-520.

[6] The collective negotiation mechanism feature a series of specifics relative to the process of negotiation the individuals participate in. Yet, strategies of negotiation are, basically, the same regardless of the fact whether individual or collective negotiation are in question. Available to the collective negotiators, as well as to the individuals, are four basic strategies: "*problem solving*", "*competition*", "y*ielding*" and "i*nactivity*". On strategies in negotiating and determinants of their choice, see: Pruit, G.D.: *Strategic choice in negotiation*, William J.B. & Rubin Z.J.: (Eds) *Negotiation theory and practice*, Sage Publication, Cambridge, Mass. 1991, pp. 27-46 .

[7] Collective labour dispute differs from that individual in subjects and the object itself of the dispute. (For details, see: Šunderić, B.: *Rešavanje sporova povodom zaključenja i primene kolektivnih ugovora, Zaštita prava u sporovima iz radnog odnosa*, (*Disputes Resolution on the Occasion of Collective Agreements Signing and Application, Protection of Rights in Employment Disputes*), Sudska i upravna praksa, 3-94; pp. 34-39; Lubarda, B.: *Kolektivni ugovori o radu – uporedno pravo, teorija i praksa (Collective Agreements on Labour – Comparative Law, Theory and Practice)*, Beograd, 1990, p. 147).

nature[8], has different reach and causes various social and economic consequences.

3. Undoubtedly, occurrence of the collective labour disputes is not desirous because many of them can cause disturbances in industrial relations of very serious consequences. Therefore, it is necessary, using adequate mechanisms, to hinder their occurrence so as to prevent disturbance of economic life and, if there occurs a dispute anyway, it should be resolved and eliminated from the legal life as soon as possible. However, the fact is that the collective labour disputes, as well as all other social conflicts, in themselves, are neither "good" nor "bad", since each (collective labour) dispute involves both regressive and progressive potential[9]. How that potential will be used depends upon whether the dispute, in its dynamics, will take a constructive or destructive course. In other words, collective labour disputes may be a source of instability and destruction of industrial relations or a generator of their development and improvement. If the process of the collective labour disputes resolution takes a constructive course, it may turn out that the dispute itself was a cause to redefine the relations of the social partners and that in the process of the constructive dispute resolution there occurred qualitative improvement of their overall relations and establishment of a new and lasting stability in the sphere of industrial relations.

4. Resolution of the collective labour disputes is based on the social partners autonomy principle upon which the process of the collective negotiation itself is based, which means the possibility that the social partners themselves choose the method of the collective labour disputes resolution and regulate the procedure to be used during their resolution. Which method of the collective labour disputes resolution will be provided for, depends upon the number of factors, among which of particular importance is development of trade unions and associations of employers, scope of legal regulation of labour relations, cultural and legal tradition, characteristics of the law consciousness and other features of the law system. It is certain, however, that peaceful methods of the collective labour disputes resolution, such as mediation, conciliation and arbitration, are immanent to the spirit and of the collective negotiation[10].

Reaffirmation of the classical concept of the collective agreements in the Yugoslav law brought about changes in view of the collective labour disputes resolution method as well. The essence of these changes is in that the priority is given to the peaceful methods of disputes resolution. In that sense, legislative subjects in the Federative Republic of

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[8] Each (collective labour) dispute, in essence, represents a *conflict of interests*, legitimate, nonlegitimate, rational, irrational. However, in view of the immediate subject of the dispute, it is a usual practice to divide collective labour disputes into legal and that of interest.

[9] See: Lubarda, B.:*Rešavanje kolektivnih radnih sporova - principi, metodi institucije (Collective Labour Disputes Resolution – Principles, Methods, Institutions*), Pravni život, 11/95, Series "Court and Law", Volume III, p. 593. According to the knowledge offered by conflictology, a relatively new interdisciplinary, scientific discipline, each social conflict contains in itself both regressive and progressive potential. (For details, see: Kovač Cerović, T.: *Sukobi: nastanak, tok, ishodi (Disputes – Occurrence, Course, Outcomes*), in: Popadić, D., Mrše, S., Kovač Cerović, T., Pečujlić, Mastilović, S., Kijevčanin, S., Petrović, D., Bogdanović, M., *Pametniji ne popušta (It is the Wiser Who Does Not Give In)*, Beograd, 1998, p. 16).

[10] On that: Kessler, F.: Convention collective de travail, Revue internationale de droit comparé, No 2/1988, pp. 391-393.

Yugoslavia have provided for the basic procedural mechanisms which may be used for the purpose of the collective labour disputes resolution and have created legal frameworks for the future autonomous regulation of the method of resolution of this kind of disputes.

Rules on the collective labour disputes resolution in the Yugoslav law are contained in the federal statutes on labour relations and those of the member republics, in certain sublegal acts as well as in numerous autonomous sources of the labour law.

The Federal Statute on the Basics of Labour Relations stipulates that "*a dispute arising from a procedure of conclusion, i.e. from a change, as well as a dispute in the procedure of the collective agreement application shall be resolved by immediate negotiations or arbitration mediation*"[11].

Similar provisions are contained in the Statute on Labour Relations of the Republic of Serbia which provides for that *a dispute arising from a procedure of conclusion, i.e. from changes and supplements to the collective agreement shall be resolved in a peaceful manner* and that *conflicting questions in the application of the collective agreements shall be resolved by a special body consisting of the participants of the collective agreement within 15 days from the date of bringing the dispute*. Social partners are empowered, by means of the collective agreement, to regulate composition, method of operation and legal effect of decisions made by the special body responsible for disputes resolution[12]. The same Statute provides for that interests and legal disputes relative to the individual collective agreements shall be resolved by the arbitration responsible for labour disputes. This arbitral institution is established by the regional economic chamber and the trade union organization for the territory of one or more communities, i.e. city. Legal and interests disputes arising from the procedure of conclusion, changes or application of general and separate collective agreements shall be resolved by a special arbitration established by the contractors themselves[13]. Arbitration for the collective labour disputes is not, however, empowered to judge, but its assignment is to *mediate* in negotiations and to *provide support* to the social partners during resolution of the collective labour disputes by mutual consent[14].

Pursuant to the Law on Labour Relations of the Republic of Montenegro, collective labour disputes arising from the procedure of conclusion and performance of the collective agreement shall be resolved by the arbitration board, the decision of which replaces the collective agreement to its conclusion[15].

The lack of appropriate experiences and poor practice of peaceful collective labour disputes resolution, have imposed a need to prescribe basic regulations on the labour disputes arbitration performance, so as to speed up application of mediation and other methods of the labour disputes resolution by mutual consent. In consequence, the minister for labour and combatants and social questions of the Government of the

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[11] Article 76 of the Statute on the Basics of Labour Relations of FR of Yugoslavia.
[12] Article 126 of the Statute on Labour Relations of the Republic of Serbia.
[13] Article 116 Paragraph 1 and 4 of the Statute on Labour Relations of the Republic of Serbia.
[14] Article 14 of the Statute on Labour Relations of the Republic of Serbia.
[15] Arbitration board consists of three members; two members are appointed by the contracting parties and one member by the Assembly of Montenegro (Article 73 Paragraph 2 of the Statute on Labour Relations of the Republic of Montenegro).

Republic of Serbia has enacted a Rule Book on Arbitration for Labour Disputes[16], according to which, in addition to the rest, constitution of this arbitration institution, mode of making its operating procedures, method of operation of the arbitration boards and basic principles and frameworks of the procedure itself before its organs are regulated. Although three years have already passed since the date of enactment of the Rule Book, it is a small number of communities, i.e. cities which have completed the process of establishing the labour disputes arbitrations, so that their number is still irrelevant.

Over the period which followed after the Federal Statute on Labour Relations and those of both republics had been passed, numerous collective agreements (general and individual) were concluded, under which, among the rest, the method of the collective labour disputes resolution was also regulated[17].

Pursuant to the provisions of the General Collective Agreement concluded at the level of the Republic of Serbia[18], for the purpose of interests collective disputes resolution, disputants can appoint mediators the assignment of which is be to bring the attitudes closer and to propose resolution of the dispute and, after the mediation procedure completed, to make a report on the mediation results and on the cause of its possible failure. As regards the resolution of legal disputes arising during the application of the General Collective Agreement, they are expected to be meritoriously resolved before the arbitration the parties are obliged to appeal to. The decision of the arbitration is not binding on the disputants, unless otherwise agreed upon[19].

Under the General Collective Agreement at the level of the Republic of Montenegro[20], use of mediation for the purpose of the collective labour disputes resolution has not been provided for by the contracting parties, but, in accordance with the legal solution, an arbitration method of resolution of disputes has been agreed upon[21].

5. Analysis of the valid legal and autonomous regulations on the collective labour disputes resolution mode shows that mediation is a prevailing method of resolution of this kind of disputes. When devising mechanisms for the collective labour disputes

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[16] Rule Book on Arbitration for Labour Disputes enacted by the minister on January 21, 1997, in accordance with his authority under Article 151 Paragraph 4 of the Law on Labour Relation of the Republic of Serbia, published in the Official Gazette of the Republic of Serbia, No. 2/97.

[17] Regulations on the method of collective labour disputes resolution are contained in the obligation part of the collective agreements. Although there was a possibility the collective labour disputes resolution mechanism to be regulated on the whole by a special procedural (collective) agreement, this was not utilized in our practice so far.

[18] General Collective Agreement concluded among the Trade Union Council of Serbia, Economic Chamber of Serbia and the Government of the Republic of Serbia on May 22, 1977, (Official Gazette of the Republic of Serbia, of May 26, 1977, No. 22/97) provides for that disputes arising from changes and supplements to the Agreement or on the occasion of concluding a new general collective agreement, as well as disputes arising from the application of the Agreement shall be resolved by "*conciliation, mediation, by means of arbitration or other methods in keeping with the law*" (Article 53).

[19] Articles 55 and 56 of the General Collective Agreement at the level of the Republic of Serbia.

[20] General Collective Agreement concluded among he Independent Trade Unions Council of Montenegro, Economic Chamber of Montenegro and the Government of the Republic of Montenegro of November 7, 1995 (Official Register of the Republic of Montenegro, No. 35/95).

[21] Article 48 of the General Collective Agreement of the Republic of Montenegro.

resolution, a great number of social partners in the Federative Republic of Yugoslavia have decided for mediation, estimating that this procedural mechanism, because of its characteristics and advantages over other peaceful methods of resolution of disputes, enables effective and economic resolution of the collective labour disputes.

6. Mediation is a special method of resolution of disputes which belongs to the group of alternative mechanisms for peaceful, out-of-the-court disputes resolution (the so-called ADR technique – Alternative Dispute Resolution). As a phenomenon of the procedural law, the mediation procedure is usually descriptively defined, having in mind its structure, function accomplished and the contents of the activity taken during the procedure[22]. In literature, mediation is most frequently quoted as a set of activities taken with the aim that parties, supported by one or more mediators, by means of negotiation, should by a mutual consent come to the resolution of a dispute, an outcome that matches their (well-understood) interests and which means neither victory nor loss of a party, but their mutual gain. The contents of this procedure consist of a negotiating activity of disputants and a mediatory activity of one or more mediators, the assignment of which is to tactically direct the parties towards the righteous resolution of a dispute as well as to help them resolve their dispute by mutual consent providing them with adequate suggestions, counsels, proposals and recommendations[23].

Positive features of mediation are not only that its use makes possible effective resolution of collective labour disputes, but also that mediation prevents occurrence of future labour disputes, because it contributes to better mutual understanding of the social partners and improves their communications and co-operation. Those are just reasons because of which mediation is favoured in many foreign procedural systems and it is over recent years that it experiences a very explosion.

Considerable differences have emerged during the contractual arrangement of mediation as a method for the collective labour disputes resolution. Thus, for example, mediation was foreseen in certain collective agreements as a subsidiary method of disputes resolution because it can be used only if the conciliation process fails, while its use in certain collective agreements is not conditioned by the previously taken conciliation procedure. Besides, General Collective Agreement at the level of the Republic of Serbia as well as in the largest number of special collective agreements provides for that mediation can be used only for the purpose of resolution of interests disputes, which, due to their character, are not suitable for pronouncing a verdict[24],

[22] In foreign literature, this procedural mechanism is described as "something better", "more accessible and understandable to the layperson, less adversarial, expensive and time-consuming, and more likely to produce an outcome that matches the interests of the disputants". (See excerpts from the work *What is mediation?* Glass A. Half Full, Texas Law Review, Vol. 73, p. 1594 on web: www.adrr.com/adr 1/essayi.htm. Similar qualifications are also given by Miller Seymour W., in the work *Mediation – and alternative dispute resolution, methodology whose time has come (Accountant's Liability)*, published on site http://www.luca.com/cpajournal.htm.

[23] For details on the contents of the mediatory activity, see: Stanković, G., Starović, B., Keča., Petrušić, N.: Arbitražno procesno pravo, (Arbitration Procedural Statute, Udruženje za građansko procesno i arbitražno pravo, Niš, 1999, pp. 218-226.

[24] In view of the subject and nature of relations under which they arise, interests (collective) labour disputes are resolved either peacefully or by applying a method of the so-called direct industrial actions (strike or lock-out). Lubarda, B.: Rešavanje kolektivnim radnih sporova – Metodi i institucije, (*Collective Labour Disputes Resolution* –

although this procedural mechanism can successfully be used for the purpose of resolution of legal disputes.

Comparative analysis of legal and autonomous rules on mediation as a method for the collective labour disputes resolution demonstrates that approach to mediation in the Yugoslav law is, as a rule, optional. Cogent regulations do not regulate responsibility of disputants to start a mediation procedure, while social partners, although empowered to agree upon obligatory conducting of a mediation procedure, did not, as a rule, take advantage of this opportunity. Therefore, there are rare collective agreements which provide for active participation of contractors in the mediation procedure as a condition for direct industrial action (strike or lock-out).

7. Investigations show that the method of mediation in our procedural system has not still been affirmed as a successful method of the collective labor disputes resolution. Although it is, compared with other methods, considerably simpler, less nonformal and shorter and, regardless of the fact that its conducting incurs considerably less expenses, it is evident that use of the mediation method has not come into life to a far greater extent yet.

Numerous and very complex are causes for such a state, out of which some are, strictly speaking, outside the sphere of law.

One of the principal causes, due to which the mediation method is rarely used in practice, is the circumstance that the mediation process itself in the Yugoslav law has not sufficiently been normatively shaped because of a lack of minimum necessary rules on the very mediation procedure, on the form and contents of the mediation activity, as well as the rules on the rights and responsibilities of the subjects taking part in the procedure. Absence of the basic procedural rules on the mediation procedure is manifoldly harmful, particularly if it is born in mind that exactly these rules impart a character of a special method for resolution of disputes to the mediation activity.

The mediation procedure has a nonformal character, so it is, therefore, understandable that it cannot be in details and strictly regulated, neither possible is creation of similar, standardized and uniform rules of procedure, which would, certainly, lessen its flexibility. Although the shaping of each individual procedure of mediation, by nature of things, must be left to mediators, yet existence of a certain minimum of functional procedural rules, formulated in the form of principles and recommendations, which would be obligatory for all the participants in the mediation process, is indispensable. Leading to such a conclusion are experiences of foreign countries where mediation has become an effective method for resolution of disputes only after adequate shaping of the mediation process based upon certain principles such as dispositivity principle, principle of voluntariness, principle of discretion and other methodical principles, the concretization and practical application of which prevent misuses and unpleasant surprises in the procedure and provide conditions for successful resolution of disputes[25].

On the other hand, analysis of the valid rules on the mediation procedure shows that, when normative shaping of this procedural mechanism was underway, the essence and

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Methods and Institutions), Beograd, 1998.

[25] For details on the course and contents of mediation, see: Moor, S.: *The Mediation Process*, San Francisco, Josses Bass, 1986.

meaning of the mediatory activities were not always considered. Thus, for example, provisions of the Statute on Labour Relations of the Republic of Serbia provide for that the mediation procedure before the arbitration for labour disputes is put to an end by "*the decision on the agreement reached*"[26], although mediators are not empowered to make decisions, but to provide help to the negotiators and to propose possible resolution of the dispute. Also, provisions of certain collective agreements on the mediation procedure lead to a conclusion that the meaning of this procedure is not to provide help for disputants, so as to come to a compromising resolution through negotiations, but that the mediation procedure be conducted in such a way that the mediators themselves should match their attitudes and come to a mutual proposal on the dispute resolution method to be presented to the disputants for consideration[27].

The cause for sporadic use of mediation also lies, probably, in the circumstance that this procedural mechanism has not been verified in practice yet as an effective method for resolution of disputes, which is to a great extent contributed to by insufficiently trained and expert mediators. Although the mediation success primarily depends upon the capability and skillness of the mediators, inadequate attention is paid in our practice to the mediators education. Leading to such a conclusion is also the fact that labour disputes arbitrations and other similar institutions do not have lists of arbitrators who would be given expert training for mediatory activities performance. This is quite uderstandable if it is born in mind that none of our educational institutions educates potential mediators for performance of extremely complex assignments understood by mediation.

Of decisive importance for the mediation success is the role of mediators, which was proved a long time ago in the practice of all countries where mediation was affirmed in practice as a successful procedural method. For the purpose of improving the mediation process, special attention is being paid to the education of mediators. Many mediation centres, lawyer chambers, academic and other educational institutions and associations organize special courses and training for mediators, within which attendees acquire expert knowledge from different fields of social sciences, so as to gain and master the mediatory skill[28]. While mediation in the past was practised by persons of different educational profiles and professions, mediation in many countries is, nowadays, a special

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[26] Article 118 Paragraph 3 of the Statute on Labour Relations of the Republic of Serbia. Legal concept of arbitration for labour disputes has encountered a negative criticism of the domestic scientific and professional public. According to the understanding of the labour law theoreticians, resolution of neither individual nor collective labour disputes has adequately been regulated in our law system. (See: Brajić. V.: *Domašaj propisa, struke i prakse u oblasti radnih odnosa*, (*Reach of Regulations, Profession and Practice in the Field of Labour Relations*), Pravni život, 11/98, Series "Moć i nemoć prava" (Strenght and Weakness of Law), Volume III, pp. 773-774; Jovanović, P.: *Potrebe izmena i dopuna propisa o arbitražnom rešavanju radnih sporova u jugoslovenskom pravu (Needs to Change and Supply Regulations on Arbitrar Resolution of Labour Disputes in Yugoslav Law)*, Radno i socijalno pravo, 3-6/98, pp. 1-3-110: Ivošević, Z.: *Komentar Zakona o osnovama radnih odnosa (Comments on the Statute on the Basics of Labour Relations)*, Beograd, 1997, p. 279).

[27] Thus, for example, Article 77 of the Separate Collective Agreement for Civil Engineering (Official Gazette of the Republic of Serbia, 1/98) reads: "*The disputants shall appoint two expert mediators each from the field being the subject of the dispute. Should the mediators come to an agreement, the proposal agreed upon is submitted to the disputants for adoption*". Provisions of similar contents are also provided for in other collective agreements.

[28] One of the best programmes for mediators education is offered by Harvard Law School (The M.I.T. – Harvard Public Disputes Program).

profession performed by experts for mediation, professionally qualified persons for performance of this kind of activity[29].

Mediation success greatly depends upon the facilitative capabilities of mediators, so that particular attention is being paid to the skill of facilitation in educational programmes. As a facilitator, the mediator contributes to the creation of confidence in the mediation success, directs and sets the tone to discussion, helps disputants to exchange and clear up information and overcome difficult, unpleasant and discouraging situations during the negotiation process, instructs and directs disputants to identify and consider each controversial matter, to understand the dispute in a time retrospect, to bring their attitudes closer, etc. Thanks to the mastered skill of facilitation, as well as to the acquired skill of "active listening", the mediators are qualified to communicate with disputants in a nonconfronting manner, to correctly trace the course of their dialog and tactically and not intrusively direct them towards the co-operative and constructive resolution of the dispute, so as, to that purpose, to offer new options, inventive suggestions and creative proposals[30].

Mediation, as a method intended for the collective disputes resolution, has not experienced wider use in this society, because, in addition to other things, appropriate public mediation institutions (boards, services) have not been established, the assignment of which would be to provide organizational, technical and other conditions for conducting mediation processes. Foundation of (public and private) institutions for peaceful resolution of industrial conflicts in the foreign arbitration practice has sped up the use of mediation and has considerably contributed to the improvement of this procedural method[31].

8. Unfavourale conditions of our labour and law system as regards the methods and institutions intended for peaceful collective labour disputes resolution, which scientific and professional circles have been pointing to for a long time, was a motive an adequate

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[29] Moore, C.W.: Kako se odvija medijacija?(How is Mediation Conducted?) in: Socijalni konflikti – karakteristike i način rešavanja (Social Conflicts – Characteristics and Method of Resiolution), prepared by Popadić, D., Plut, D., Kovač Cerović, T., Beograd, p. 173.

[30] For educational purposes, intended for the mediators are numerous handbooks containing instructions for conducting disputes, the authors of which are respectable mediators with huge practical experience, who, due to their mediation successes hold informal title "*Conflict Doctor*". (See, for example: Jennifer E. Beer with Eileen Stief,: The Mediator's Handbook; Allan H. Goodman,: Basic Skill for the New Mediator; Eileen Babbit, Paula Gutlove, Lynne Jones,: Handbook of Basic Conflict Resolution Skills: Facilitation, Mediation and Consensus Building; Mark D. Bennet and Michele S.G. Hermann: The Art of Mediation. Bibliographical data on the mediation handbooks is published on web: http://adrr.com/pun/med).

[31] There is a widespread network of public and private mediation centres and other similar institutions in many countries, which, under the auspices of and sponsored and supported by the governmental and local government organs, administer the mediating process and provide technical conditions for its success. Thus, for example, the greatest contribution to the mediation activity improvement in the States is that of, *American Arbitration Association (AAA), Federal Mediation and Conciliation Service (FMCS)* and *National Mediation Board (NMB)*, which promote, support and organize the mediation process and application of other ADR techniques for resolution of disputes in the field of labour and other social relations. Mediators of the *Federal Mediation and Conciliation Service* are specially educated for rendering mediatory services for the purpose of peaceful collective labour disputes settlement, including also those in which as disputants appear employees of the federal government, federal units and local government (See: Goldman, A.L.: *Labor Law and Industrial Relations in U.S.A.*, Kluwer, 1984, p. 307).

attention to be placed upon the mechanism of the collective labour disputes resolution when preparing the text of the General Collective Agreements at the level of the Federal Republic of Yugoslavia.

A group of experts assigned to devise the text of this legal act, consisting of fourteen respectable scientists and law experts, using experiences of foreign countries, has made recommendations for voluntary and institutional resolution of collective labour disputes. Regulations on peaceful resolution of the collective labour disputes, contained in Annex 1 to the Draft General Collective Agreements at the level of the Federal Republic of Yugoslavia, provide for that future contractors, Association of Independent Trade Unions of Yugoslavia, Economic Chamber of Yugoslavia and the Federal Government should establish, under a separate agreement, a standing and independent service for peaceful resolution of collective labour disputes. The assignment of this federal institution would be to organize and perform other jobs relative to conciliation, mediation and arbitration[32].

The method of organizang and performance of the service for peaceful resolution of the collective labour disputes would be regulated under the operating procedures and a separate codex which would establish principles and rules of professional responsibilities, principles on operation of the service and resolution the of collective labour disputes. The service would, upon the proposal of the founder, and in accordance with the tripartite principle, make a list of standing mediators, out of which disputants would appoint mediators. In keeping with the proposed solution, - the role of a mediator could be entrusted by disputants to an individual mediator or a mediatory staff[33].

The federal service for peaceful resolution of the collective labour disputes would be competent for the collective labour disputes resolution if disputants should come to agreement on its competence by concluding a separate agreement on mediation or by incorporating corresponding clauses on mediation into the text of the collective agreement.

Analysis of the proposed solutions shows that physiognomy of the standing federal institution for peaceful resolution of the collective labour disputes, the establishment of which was proposed by a team of experts, has been conceptually consistently shaped. Principles upon which its operation is based are in line with the international comparative and law standards which are nowadays in effect in this field. It is positive that constitution and operation of the standing service for peaceful resolution of the collective disputes would contribute to the affirmation of mediation and strongly incite further improvement of the method for peaceful resolution of this kind of labour disputes.

9. It is ungrateful to forecast what will be the intensity of development of further activities on improving and affirming mediation and other mechanisms for peaceful resolution of the collective labour disputes in this society. However, it is certain that the tempo of desirous changes will greatly depend upon the readiness of the state to offer, in keeping with the tripartite principle, adequate law and political and material support to

[32] See Article 2 of Annex 1 to the General Collective Agreement at the level of the Federal Republic of Yugoslavia of January 23, 1997 (proposal of a group of experts).

[33] Articles 2 and 3 of Annex 1 to the General Collective Agreement at the level of the Federal Republic of Yugoslavia (proposal of a group of experts).

the development of institutions and methods for peaceful resolution of the collective labour disputes, without which maintenance of stability in labour and law relations is inconceivable in a modern society.

POSREDOVANJE – METOD REŠAVANJA KOLEKTIVNIH RADNIH SPOROVA U JUGOSLOVENSKOM PRAVU

Nevena Petrušić

U radu je razmotren mehanizam posredovanja, jedan od metoda za mirno rešavanje kolektivnih radnih sporova u jugoslovenskom pravu. Istraženi su sadržina i cilj postupka posredovanja i domen njegove primene. Kritićki su analizirana važeća organizaciona i funkcionalna pravila o posredovanju. Razmotreni su uzroci sporadične primene posredovanja u jugoslovenskom pravu i ukazano na pravce daljeg unapređenja ovog procesnog metoda, čija bi praktična afirmacija podstakla razvoj ravnopravnih odnosa i doprinela uspostavljanju i stabilizaciji "socijalnog mira".

Ključne reči: *kolektivno pregovaranje, kolektivni radni sporovi, posredovanja, mirno rešenje spora.*