

**TAIEX Workshop on Peaceful
Resolution of Labour Disputes**

organised in collaboration with:

**Agency for Peaceful Settlement of
Labor Disputes of Montenegro**

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Experiences and good practices related to the conciliation and arbitration – study cases

Experience from Austria:

- Mediation under the “Employment of People with Disabilities Act” and the “Vocational Training Act”

Conciliation by Social Welfare Office

- Employment of People with Disabilities Act
 - temporary limits on access to court
 - parties attempt conciliation proceeding before claim is filed
- Request for conciliation by person who claims to be subject to discrimination
 - orally or in writing
- Every regional office of the Federal Social Welfare Office conducts conciliation procedures to ensure equality for people with disabilities.

Conciliation by Social Welfare Office II

- every effort for amicable resolution
- examines services and support under federal and land legislation
- mediation by external mediators (as defined in Austrian Mediation Act) offered
- conciliation proceedings terminate when
 - the dispute has been settled
 - it was impossible to reach an amicable settlement
- FSWO communicates outcome to the Disabilities Ombudsman

External Mediation

- Parties choose 1 mediator from list of Social Welfare Office
- Mediator paid by Social Welfare Office
 - 10 resp. 12 hours max.
 - 86€ per hour
- Costs of experts, interpreters and other specialists borne by the State
(Federal Ministry of Social Security, Generations and Consumer Protection)

Evaluation report

Conciliation

- most important instrument
- very effective
- conciliators' knowledge about funding and subsidizing possibilities is crucial

2006-2010: 756 conciliation procedures

- 358 agreements (46%)
- 298 cases without agreement (37%)
- 100 claims drawn back (12,5%)
 - 50% no hope for agreement
 - 50% agreement reached before conciliation procedures started

Evaluation report II

- 55% of complaining parties (conciliation seekers)
- 71% of conciliation “partners”
 - **“Very or rather satisfied” with the procedure**
 - 90% of “not satisfied” conciliation seekers had not reached an agreement
 - High satisfaction with blinds, persons in wheel-chairs and/or physically disabled persons
- After conciliation procedure under Employment of People with Disabilities Act:
- 39% of firms and organisations: more consciousness for needs of persons with disabilities
- 25% of firms and organisations: partly more consciousness for needs of persons with disabilities

Evaluation report III

Only 16 cases in mediation (2% of all cases)

- Possible causes
 - Parties don't see much difference between conciliation procedure and mediation
 - time restrictions of managers
 - difficulty to make new arrangements
 - set meetings with an external mediator
- Cost for mediation can not be a cause
 - mediator paid by Social Welfare Office

Evaluation report IV

Recommendations

- Rise awareness for procedure of conciliation
 - More information (especially countryside)
- Publish Good-practice examples
 - Employees with disabilities
- Keep mediation as a possibility

Source: Schober, C., S. Sprajcer, et al. (2012):
 Evaluierung des Behindertengleichstellungsgesetzes. Sozialpolitische
 Studienreihe Band 10. BMASK, Wien.

Practice case: data

- Took place in Vienna, mediators office
- employer: security business
(service provider and responsibilities of public administration)
 - company with 1000 employees
 - HR Manager, line manager, company's attorney
- employee with chronic illness
 - Status > “50% impaired” pending
 - + legal Council from Austrian Chamber of Labour
 - + representative of workers council
- 3 x 2 hours sessions in 8 weeks
- 4 participants

Practice case: agenda

- Contracting
- Issues/ topics
- Interests
- Joint problem statement
- Options
- Negotiations
- Agreement

Mediation under Vocational Training Act

Extraordinary termination

- Art. 15a. (1) Both the trainer and the apprentice can unilaterally and extraordinarily terminate the apprenticeship
 - on the last day of the twelfth month of the apprenticeship
 - in the case of apprenticeships with a duration of 3, 3,5 or 4 years on the last day of the twenty-fourth month of the apprenticeship by giving one month's notice.

“Trainees’ mediation”: proceedings

- (3) The extraordinary termination of an apprenticeship by the trainer shall only take effect if the trainer has notified
 - the apprentice, the business where the apprentice is receiving training, and, where applicable, also the Works Council as well as the Youth Council of his intention to extraordinarily terminate the apprenticeship and
 - **to initiate mediation proceedings** no later than on the last day of the ninth or twenty-first month of the apprenticeship, respectively, and
 - **if mediation proceedings were conducted and completed in accordance with Sec. 6**
 - before the apprentice received the extraordinary termination notice.

“Trainees’ mediation”: aims

- The purpose of the mediation is to clarify the issues in a manner which can be comprehended by all parties and to explore
 - whether and under which circumstances the apprenticeship can be continued.
- The costs of the mediation shall be borne by the trainer.
- Mediation is concluded
 - agreement reached
 - mediator’s declares concluded
 - on 5th working day before the last day of the 11th or 23th apprenticeship month, provided at least one mediation meeting was held

Experiences I

- Austrian Chamber of Labour
 - feared mediation might be misused
 - no extraordinary termination before
- no official evaluation study / report so far
- few data available

Vienna 2010:

- 3.025 apprenticeship contracts terminated
 - 33,6% early termination (first three months)
 - 18,6 % termination by the apprentice
 - 40 % mutual termination
 - 7,7 % by trainer = 232
- – only **11 cases under the Vocational Training Act § 15a = 0,4 %**

Experiences II

Carinthia 2009-2011

- Procedures under § 15a BAG 2009 – 2011: 59 (total)
- Results:
- Continuation of apprenticeship: 12
- Mutual termination: 24
- Extraordinary termination under § 15a BAG: 11

About 150 mediation cases per year in Austria

Mediation case in the tourism industry

First contact: phone + letters

First meetings:

- Caucus of one hour with trainee and person of trust in mediator's office
- caucus of one hour with HR director and representative of workers council in hotel

One joint mediation session:

- 2h mediation in mediators' office
- Participants:
 - trainer (HR Director of the firm) + his vice director
 - head of workers council +
 - full age apprentice + trusted person of her choice + representative of the Chamber of Labor

Mediation case: crucial elements

- Success factors
 - Trainee gained trust in mediator
 - Trainee and HR director talked directly
 - HR director before retiring wanted to understand
 - Reputation of company very important
 - Presence of all persons / many players
 - Social pressure
 - Face saving and face giving
 - Representative of Chamber of Labor was asked to prepare the written agreement

Requirements for selection of arbitrators and conciliators, rights, obligations and responsibilities of mediators and arbitrators and their competencies in individual and collective labour disputes according to EU regulations

Austrian Civil Law Mediation Act

Under Civil Law Mediation Act

- Over 28 years old
- Professionally qualified = appropriate training (365 or 220h)
- Trustworthy
- Liability insurance min 400.000 per case
- Premises

Rights/obligations/responsibilities of registered mediator

- Obligated to carry designation “registered mediator”
- May not represent, advice or decide in the same conflict
- May only act with approval of the parties
- Refer the parties to counselling needs
- Document beginnings, circumstances and end of mediation
- Obligated to secrecy

Rights/obligations/responsibilities of registered mediator II

- Undertake continuing professional education
 - At least 50h in five years
- mediation by a registered mediator suspends the application of the start and running of the statute of limitations

A mediator is a professionally trained neutral facilitator who

- using recognised methods
- systematically encourages communication between the Parties, with the
- aim of enabling the Parties to
- themselves reach a resolution of their dispute.

Advantages of the amicable resolution of
labour disputes v.s. judicial

Conflict escalation stages and adequate
ways of resolving conflict

Conflict escalation

Win-Win Phase



Win-Lose Phase



Lose-Lose Phase



(see Glasl 2004,
translation CM)

3 Win – Win Phases

1. Hardening

2. Debate and
polemics

3. Actions



(see Glasl 2004,
translation CM)

3 Win – Lose - Phases

4. Images and coalitions

5. Loss of face

6. Threats



3 Lose – Lose Phases

7. Limited devastating blows

8. Fragmentation

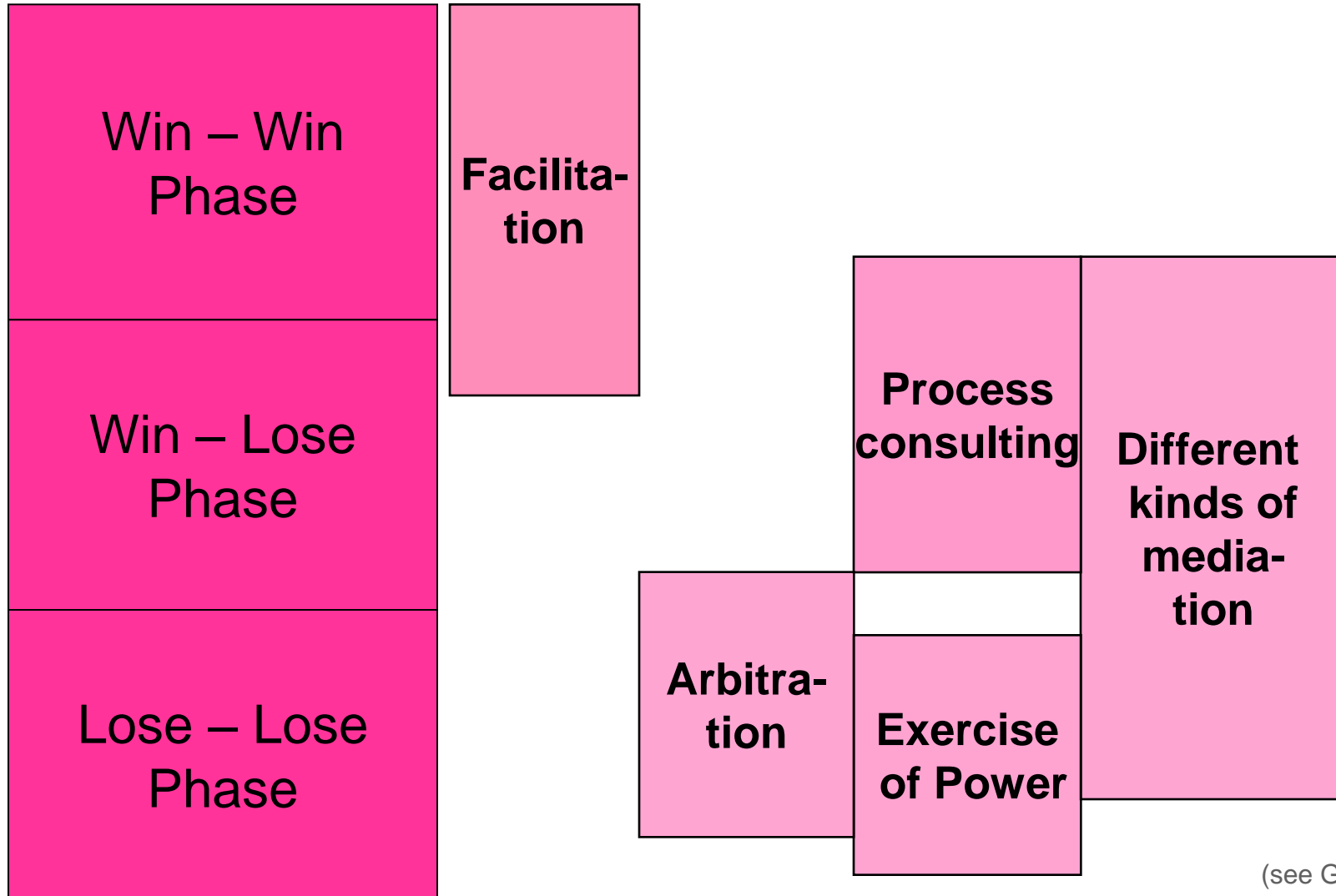


9. „Together into the Abyss“

Ways of dealing w/ conflict in organisations

<u>Party A</u>	Party B	Third Party w/ interest in conflict	Neutral Third Party
Self-management Reframes situation Counselling/ support			
With other party	Unconscious versus conscious acting: negotiation , five conflict styles		
With other party and Third Party	The parties and	Boss / Authority „ <i>facilitates</i> “ decision	Mediator leads process : mediation
Delegation to Decision- Maker		Boss makes: decision	Arbitrator/Judge imposes decision: arbitration/ court decision

Intervention strategies



(see Glasl 2004,
translation CM)