Conciliation, Mediation and Arbitrage Jurisdiction in Germany

National level

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I. Law and Labour Relations System: Overview*

1. Questions

The aim of this introduction is not to represent or to explain comprehensively the German Labor Law[1]. It is more about a quick overview of the object of investigation -"Conciliation"- and of the agents who mediate into the offical and autonomous regulative laws as much as into the mechanisms for solving conflicts.

2. Labour Legal Relations Agents

Main agents of labor legal relations are Coalitions, that are Trade Unions on one side and Employer Unions on the other (or some individual employers). On the basis of legal statements of GG, Art 9 Par. 3, which expresively protects[2] freedom for Coalitions and, according to its goals and sense, the activity of Unions, the wage autonomy and the right to strike, both unions come to an agreement on wages.

Trade Unions' structure depends on principles of organization of a sole Union and branched Trade Unions. At the union top there is at present the German Sindical League (DGB) with eight Unions organized in branches. This DGB does exist since 1949. The fact that workers are organized in a sole Union independent from political and conffesional convictions results from their experiences as much as fatidic consequences of the political separation of the working movement in times of nazi dictatorship. The number of branched unions has kept on coming down because of the closing of different Unions in the course of time. In the spring of 2001 the following unions: "Public Services, Transport and Traffic" (ÖTV); "German Post Services" (DPG); "Commerce, Banking and Assurances" (HBV); "IG Media" and the "German Employee Union" (DAG) became unified in the "Verdi" ("United Trade Union of Services"). Since then, "DAG" belongs to DGB and together with "Verdi" and close to "IG Metal", it does exist a great quantity of more branched Unions. From nearly 8-9 million of DGB Union members there are now in the new Trade Union of Services and in "IG Metal", aproximately 2/3 of organized members. The whole organization level of sindicalism rests between 30% and 35% of the total depending professions.

The organizational structure of the Employer Union follows basically those Unions. As a top Union, the "Confederation of the German Union of Employer" (BDA)[3] has a proper jurisdiction over the ambit of "social and job policies", included wage agreements. To the BDA more than 40 branches belong, sorted out according to their

* Subdivisions follow as possible the structure that was discussed in the 30.11.01meeting of Experts and was fixed in a report by Prof. Fernando Dal Ré.

[1] On this, with different central items: Kittner/Zwanziger. Ed Arbeitrecht, 2001, pg 6, ff; Schaub, Arbeitsrechtshandvuch (Labor Legal Handbook) 9, Ed 2000, pg 10 ff.

[2] Bundesverfassunggericht, i.e. BvVerfG 26.6.1991, BverfGE 84, 212; new Overview Zachert, AR-Blattei SD 1650.1 "Vereinigungsfreihieit/Koalitionsfreiheit", 2001, Randnumer 1 ff.

[3] As President of the mighty "Confederation of the German Industry" (BDI) Olaf Henkel had in the last years quite an influence in wage policy. He is a decided contender of the growing policy of Unions and wages; at the end of 2000 he retired. See Henkel, Jetzt oder nie (Now or never), 1998, pg 148 ff; the same, Handelsblatt (Commercial Journal) 21.2.2000, pg 5.

professional union, for example the “Metal Community” for the metal industry or the “Private Banking Activity Employer Union”, etc. The level of organization on the employer side goes ap. from 40% to 45%.Regarding wage policy nor even those big Unions as DGB or BDA but the Trade Union and the Employer Profession Union have the jurisdiction over all the branches; such a fact has an extraordinary practical significance.

3. Official and Autonomous Law Like a number of countries of the European Union with the exception of the anglo saxon Cultural Circles, there exists in Germany a strong and developed Legislation on all the fields of social and working rights which covers from regulative norms applied to hollidays, indemnifications in case of illness, dismissal , up to especial groups that need protection, as youngsters, deficients, etc. Other countries like Spain and France have not an standard legislative code[4]. Anyway the legislator unlike many neighbor countries had not put into force until now any law on living wage. Unions are (however) strong enough to regulate properly this central question through an agreement on wages, given the changing relations in the world of the working rights[5].

Wage agreements are fixed up by regions in accordance with normative effects (Wage Agreement Law; § 4) in a typical way as a “General Wage Agreement ”. The number of yearly new settlements or reformed wage agreements rests stabile in nearly 8000. At present there have come into force more than 50000 General Wage Agreements and nearly 6000 Commercial Wage Agreement[6] [6]. In spite of the Wage Agreement according to § 3 Sec 1, the Law for Wage Agreement (TVG) has basically legal weight only when both parties who are bargaining wages agree about it, the agreements being only applied to a short 80% of the workers. Beside the general declared entailment (TVG; § 5), the predominance of individual job agreements over the corresponding wage agreements plays in the first place a proved role in a way that their level make the content of the legal individual relations. Unlike to many legal order in our neighbor European countries there exists a general opinion about a link between Wage Agreement with a (relative) obligation to peace-making: the parties interrupt force steps during the Wage Agreement term and their members must give up disputing or making working conditions worse[7]. Regarding subject matter in recent times, beside “classical questions” as wages and working hours it has been playing a role above all the regulation of wages in relation with work security and qualifications. The links between official and wage laws might be generally outlined as follows: the law states a level of minimum protection in labor rights that can be improved in many areas through wage agreements under regulation.

Enterprise settlements are equally collective settlements and according to the Enterprise Legislation (Betr VG; § 77) they are quite similar in their effects to the wage agreements. However the parties are the -by all workers

[4] Up to now last attempt of Worker Circle Deutsche Rechtseinheit im Arbeitsrecht (German Legal Unity in Arbeit Law; Survey Review)

[5] Except for youngers in the Building branch, whose minimun salary corresponds with 1996 Workers Labor Law; the 1952 "Law on minimun working conditions" has been not applied.

[6] Annual Statistik des Bundesministeriums für Arbeit, zuletzt Clasen, Moderate Abschlüsse, Yearly Statistics of the Federal Ministery for Work, at least Classes, Moderate Treaties. Bundesarbeitsblatt (Federal Job Journal) 2001, pg 12 ff.

[7] Annual Statistik des Bundesministeriums für Arbeit, zuletzt Clasen, Moderate Abschlüsse, Yearly Statistics of the Federal Ministery for Work, at least Classes, Moderate Treaties. Bundesarbeitsblatt (Federal Job Journal) 2001, pg 12 ff.

elected- Enterprise Committee and the employer of the corresponding enterprise. Their crucial point is the so called "Social Affairs" in which the Enterprise Comitee has a co-management of employers' representation (Betr VG; § 77 Sec 3 and § 87; Sec. 1). Wage arrengements have on the contrary a preference over Enterprise settlements (BetrVG; § 77, Sec 3 and § 87; Sec 1).

4. Solving the Conflicts

To understand conflict solutions, wage agreements must be clearly differentiated from enterprise settlements. The way of overcoming talk gap between the parties is labor disputation (strike and restrictive dismissal). It is generally understood that labor disputation is clearly functionally related to wage autonomy and that people in strike are not the individuals but the Trade Union[8]: "Labor disputation is supposed to be as an Institution of the wage autonomy because neither actualizing nor the matter of the real legislation on regulative wages are guaranteed[9]." The law discourse allots to the parties a particular liability for entering into a Conciliation settlement[10] that could balance opposed interests by regulation[11]. As labor disputations rest normally on the the wage agreement, the place of its relating point is prevalently the wage district or in case of a company wage agreement, the individual enterprise.

Enterprise Settlements , on the contrary, should not be established through labor disputation: Betr VG; § 74, Sec 2 produces an expressive prohibition of labor disputation between the parties. Here the solution of the conflict is the so-called Reconciliation Office (Betr VG; § 76), which may be described as an "institutional conciliation proceedings in enterprises" (Detailed in III.3.5).

II. Labor legislation on Conflicts and possible Solutions

1. Typology of Labor Legislation for Conflicts

A very important difference in German Labor Legislation occurs between individual and collective conflicts. On this does not necessarily depend the question of how the distinction could be decisively solved. There are different meanings about individual labor legislation, as long as its claiming rests, according to Labor Jurisdiction Law (ArbGG; § 2, Sec 1 Nr. 3), on decisions of the Labor Jurisdiction[12], which plays in the praxis an extremely important rol. Only as an example of quantitative significance, let's say that in 1999 there were produced nearly 570.000 new labor lawsuit proceedings, with a whole predominance of individual lawsuits [13].

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[8] Neuestens Darstellung und Kritik (New Exposition and Critics): Zachert, „Wilder Streik" – noch zeitgemäß? (Wild Strike -yet in good time?) Arbeit und Recht (Law and Work) AuR, 2001, p 401 ff.

[9] Neuestens Darstellung und Kritik (New Exposition and Critics): Zachert, „Wilder Streik" – noch zeitgemäß? (Wild Strike -yet in good time?) Arbeit und Recht (Law and Work) AuR, 2001, p 401 ff.

[10] Conciliation in English and Conciliation in Fren.

[11] BAG Großer Senat 21.4.1971, AP Nr. 43; GG Art. 9 Arbeitskampf (Working Dispute)

[12] See young Kocher, Arbitrato e conciliazione nel diritto del lavoro tedesco, Diritto del Lavoro e di Relazioni Industriali (Arbitrage and Conciliation in Labor Rights in Germany; Labor Rights and Industrial Relations) 2000, pg 463, 464 f.

[13] To this corresponds nearly the numbers of Proceedings of the previous year. On Statistics and differences: Grotmann-Höfling, Die Arbeitsgerichtsbarkeit im Lichte der Statistik (Labor Legislation under the Light of Statistics) AuR 2001, pg 54 ff.
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In Collective Lawsuit Conflicts in which on the side of the worker the Trade Union or the Enterprise Committee participate, disputations under regulations and disputations under law should be differentiated. Regulations are useful to match different interests. Here, a field for Conciliation, for a forceful decision that reachs criteria according to the aim. On the contrary disputes under law are decided, on the collective plane too, predominantly by Labor Jurisdiction: Labor Jurisdiction Law expressively forsees, for example, the competence of this Jurisdiction Labor for disputations of the parties: ArbGG § 2 a Nr 1. Disputation Lawsuits upon Enterprise Laws and Laws upon European Enterprise Committees are also decided by the Labor Legislation: ArbGG § 2 a Nr. 1and Nr. 3 b. Disputations under law, related to decisions of the Enterprise Reconciliation Office basically corresponds also to this latter reference[14].

2. Undervaluation of the Concept "Collective Conflict"

In German labor jurisdiction does not exist an expressive concept of "Collective Conflicts". (On labor dispute, Chapter I.4). As it has been already stated, it is many times essencial a previous decision about whether a conflict may through Labor Jurisdiction or Conciliation be solved, and then whether the distinction may correspond to an individual or a collective lawsuit.

Conciliations have been only playing a rol when in the disputes, in areas of economcic and labor conditions, at least one of the sides is member of a collective party[15]. As for the wages, collective parties are equally Trade Unions and Employer Unions or an individual employer, on an enterprise level of Enterprise Committee (in the Offcial Services the so-called Personnel Committee)[16].

3. Tipology of possible Conflict Solutions

As already exposed (Ch II.1), German Labor Jurisdiction makes a difference in the solving of conflicts according to whether the distinction becomes actualized by Labor Jurisdiction or external jurisdiction.

The most important external jurisdiction for an alternative solution to conflicts is Conciliation, that at a general wage scale would be prevailing dependant on a settlement of the parties. For Enterprise Settlements the Enterprise Law states that at enterprise level, the proceedings of the Reconciliation Office, just like an "Empresary Conciliation Office", in their fundamental aspects are obligatory regulated (BetrVG; § 76).

Solution to conflicts by negociations under competent labor inspectors or functionaries who were equivalent to those of many European neighbor countries (for instance France, Italy, Spain) does not exist in Germany[17]. There are neither inspectors in the Building industry (general references in Industrial Planning, § 139 b)

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[14] Here borders between Law and Regulations in disputes are elusive yet. Particulars for instance in Germelmann/Matthes/Prütting Arbeitsgerichtsgesetz (Labor Jurisdiction, 3, Ed 1999, Ann 43 ff; Grunsky, Arbeitsgerichtsgesetz (Id) 7 § 2 a; Ann 22 ff.

[15] Why in Individual Labor Law does only a restrictive area for "Mediation" rest: Albrecht, Mediation im Arbeitsrecht (Mediation in Labor Law) 2001, pg 53 ff.

[16] Com. Hromadka/Maschmann, Arbeitsrecht (Legal Labor) Vol 2, 2. Ed. 1999, pg 505 ff.

[17] Comparable references Zachert, Arbeitsrechts kodifikationen in Europa – eine rechtsvergleichende Skizze (Legal Labor Code in Europe - an outline of comparabla laws) AuR 1993, pg 193, 195 ff.

nor officers (general references in §§ 1-11 together with III Social Legislation §§ 370, 373) and so it is with the necessary material and personnel possibilitites and competences. Even less there exist a proper conciliation authority as the "Advisory Conciliation and Arbitration Service (ACAS) in England[18] or the Spanish "Servicio Interconfederal de Mediación y Arbitraje" (SIMA)[19].

III. Possibilities of external solutions to Labor Conflicts

1. Rol of State and Social Agents

The rol of the State in the realization and support in Conciliation in German Labor Jurisdiction is characterized by a serious restriction.

Collective Settlements for Conciliation have a great practical significance, as they have proceedings on which the parties are quite agreed. On the contrary the offering of a (free will) State Conciliation, which anyway exists, has only been used on a restrictive extent.

Above all there are two reasons for a clear preference for a non-State promotion or support of conciliations. One is that Germany disposes of a rather good legislation with competences also in collective labor laws (Chapter II.1). There is for instance an essential difference with the English system for conflicts with his "Advisory Conciliation and Arbitration Service" (ACAS), where the parties remain in disposition so as to complement the labor legislation[20]. Other is an historical reason playing a rol. During the Weimar Republic there was since the year 1923 an State obligatory Conciliation[21], that made Trade Union to loose autonomy and to weaken the structure of labor legislation[22], which since 1918 were dependant essentially, according to the ideas developped by Hugo Sinzheimer, on collective autonomy, which were compatible with wage agreements without State intruding[23]. That is why there has

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18 Towers/Brown, Publishing, Employment Relations in Britain: 25 years of the Advisory Conciliation and Arbitration Service, 2000.

19 Fundación SIMA Publishing; Solución Extrajudicial de conflictos Laboraleso (External Jurisdiction for Labor Solution Conflicts) 1999; also Hard Points in Relaciones Laborales (Labor Relations) 2000: External Conflict Solutions.

20 Kahn-Freund, Arbeit und Recht (Labor and Law) 1979, p 101 ff.; Binkert/Reber, Gegenwartsprobleme der französischen und britischen Arbeitsgerichtsbarkeit (Present problems in French and British Labor Legislation) AuR 2000, p 163, 165 f.; Towers/Brown, Publisher. Employment Relations in Britain: 25 years of the Advisory Conciliation and Arbitration Service, 2000; embraces data on legal comparissons: Gamillscheg, Kollektives Arbeitsrecht (Collective Labor Law) 1997, p 1003 ff.

21 Detailed Raupach, Die Schlichtung von kollektiven Arbeitsstreitigkeiten und ihre Probleme (Conciliation in in Collective Labor disputes and its problems) 1964, p 54 ff.; youngers, also Kocher, Arbitrato e conciliazione nel diritto del lavoro tedesco, Diritto del Lavoro e di Relazioni Industriali (Arbitrage and Conciliation in Labor rights in Germany, Labor Rights and Industrial Relations) 2000, p 463, 482 ff.

22 Com. Kahn-Freund, Der Funktionswandel des Arbeitsrechts, in Ramm, Herausgeber, Arbeitsrecht und Politik (Function of Lobbies, Ramm Ed, Legal Law and Politics) 1966, p 211 ff.; Steiger Kooperation, Konfrontation (Cooperation and Confrontation, Untergang 1998, p 132 ff).

23 On the von Sinzheimer significance, Zachert, Hugo Sinzheimer, praktischer Wissenschaftler und Pioner des modernen Arbeitsrechts (H.S., Científico práctico y Pioner of the modern Labor Rights, RdA. 2001, p 104 ff).

been up nowadays in Germany a certain reticence even to claim before the State as it is able to make use of proceedings for a free will Conciliation. After the Second World War there has been too often an agreement about regulation proceedings for wage conflicts, so that a Conciliation in the first place should be fixed under the own responsibility of the parties themselves[24]. A Legal State Conciliaition on free will basis could only serve as a help to act through[25].

2. General and Systematica Aspects

2.1 Typology

a. According to their Mode

The german law also considerates about the difference among Conciliation, Mediation and Arbitrage Jurisdiction.[26] However a hard practical point persists only about Conciliation and the idea of Mediation, (Mediators) firstly introduced by the angloamerican praxis into the German legal terminology.

Conciliation means to put an end to a conflict (of interests) through a third part, which passes judgement on the case after the parties' having produced the circumstances. The fundamental proceedings, the competence of the conciliatiors and the effect of the conciliation judgement rest at the discretion of the party members. Everybody welcome this for a Conciliation in wage conflicts.

See BetrVG; § 76, Sec 2 and 3 about enterprise conciliation through Reconciliation Office and the concerning obligatory regulations. In BetrVG; § 77, Sec 1, may be seen an obligatory effect of the Reconciliation Office verdict upon the co-management of affairs.

Mediation is a free will proceeding on which no legal regulation has been found in Germany. Mediation leads to a compensation because of interests. Parties determine the term for the proceedings. The Mediator has no decision competence. When there is a solution the Mediation Settlement has as a rule the effect of a private agreement.

Arbitrage Jurisdiction means that a third one, the Referee, has the force of decision and he decides his verdict. The Referee decides in first place about dispute legislation, i.e. conflicts, in which there are State norms for examining and actualizing. In legal labor the Arbitrage Jurisdiction is very especific. According to Labor Legislation (ArbGG; § 101) only parties on a restrictive extent may put this legal arbitrage into force.

The basic result is a worker's skepticism; he believes that he shall never see this Arbitrage Jurisdiction inside his scope in the legal labor field[27].

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24 For example Nautz, Die Durchsetzung der Tarifautonomie in Westdeutschland (The application of wage autonomy in Federal Germany) 1985 p 147 ff.

25 "Institutional Conciliation Proceedings" for Groups of persons who cannot apply any collective Regulations like "Home work" („Heimarbeiter". Home Work Law, § 18 ff) or "Urheber" (Actors, for instance an Author Law in some outlines on improved according to this appraisal); Überlegungen zur Reform des Urhebervertragsrechts" (Consideration on the Improving of Authors Legislation) AuR 2001, p 493 ff.

26 On Concepts and those differences, see the Overview in Albrecht, Mediation im Arbeitsrecht (Mediation in Labo Law) p 27 ff, with Data)

b. According to its Legal Fundamentals

The overwhelming number of Conciliation proceedings in wage conflicts rests on the agreements between the parties, who face themselves the legal character of wage agreements with legal obligatory effects[28] ,which are very different in their configuration and scope (see under III.3.c). During the fifties there was certainly an outline of a pattern for conciliation agreements between the German Trade Union (DGB) and the Conferation of the German Employer Unions (BDA), but it gave no results on different basis and have not especial significance at present[29].

Law legitimation of the Conciliation settlement has its force through the parties in the autonomy of wages, that is guaranteed in the statutes, GG; Art 9, Sec 3. Here the conciliation wage settlement comes from the wage autonomy and they are ahead of the legal State conciliations[30].

State conciliations have its legal basis in a law of the occupation times, immediatly after the second world war and before the foundation of the Federal Republic: the so-called "Control Law" Nr 35, from 1946, has been active until nowadays as a Federal Law. It looks at: labor local authorities seeking after experts in their own Staff, who may be able to advise employers, workers and their organizations (wage parties) and to intermediate amidst them[31]. Most of Federal Länder have promulgated especial regulations to be all over applied by these so-called "Conciliator Länder"[32].

Conciliation through Reconciliation Offices according to the Entrerprise Legal Statute depends on the legal fundamentals of BetrVG; §§ 77 ff, which fixes the basic ways for proceedings.

c. According to the Obligation of its Convocation

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27 Particulars in Germelmann/Matthes/Prütting, Arbeitsgerichtsgesetz (Labor Jurisdiction , § 101, Ann 1 ff); Grunsky, Arbeitsgerichtsgesetz (Id) § 101, Ann1 ff.; also Langer, Schiedsgerichte in Arbeitssachen, Die Arbeitsgerichtsbarkeit, Festschrift für den Deutschen Arbeitsgerichtsverband (Labor Jurisdiction , Statments for the Labor Union Jurisdiction) 1994, p 465 ff.

28 For example Kempen/Zachert, Tarifvertragsgesetz (Agreement on Wage Laws), 3. Ed 1997, § 1 Ann 4 57 ff with Data.

29 Detailed Behning, Die Schlichtung in der kollektiven Arbeitsverfassung der Bundesrepublik Deutschland (Conciliation in Collective Labor Contracts in Federal Republic) 1994, p 103 ff; Raupach, Die Schlichtung von kollektiven Arbeitsstreitigkeiten und ihre Probleme (Conciliation in collective Labor striking) 76 ff; Knevels, Das Schlichtungswesen in der Bundesrepublik, Zeitschrift für Tarifrecht (ZTR) (Modality Conciliations in Federal Republic, Contracts for Wage Rights) 1988, p 408, 409 f.

30 General Significanece: For instance Gamillscheg, Kollektives Arbeitsrecht (Collective Labor Rights, p 1306).

31 The Control Law Nr 55 is expressed by Löwisch, Arbeitskampf und Schlichtungsrecht (Labor disputes and Conciliation Law) 1997, p 491 ff.; recent Lembke, Staatliche Schlichtung in Arbeitsstreitigkeiten nach dem Kontrollratsgesetz (State Conciliation in Labor Striking according to the Control Law) Nr. 35, RdA 2000, p 223 ff.

32 Detailed: Löwisch, Arbeitskampf und Schlichtungsrecht (Labor Dispute and Conciliation Law) p 477 ff., An 57 ff.; MünchArbR/Otto, Band 3, 2. Aufl. 2000, § 294, An 15 ff.; Königbauer, Freiwillige Schlichtung und tarifliche Schiedsgerichtsbarkeit (Free will Conciliation and Arbitrage Jurisdiction for Wages) 1971, p 17 ff.

The proceedings for Conciliation in Germany are in all three variants, "Conciliation, Mediation and Arbitrage Jurisdiction", through the principle characterized by free will.

The exception is the Entreprise Conciliation through Reconciliation Office, that in affairs of co-management may be obliged by the Enterprise Committee (for proceedings: Labor Legislation § 98)

2.2 Financing

The free will proceedings and the corresponding self-regulation shall establish the financing of the conciliation, basically by the parties. As a rule expenses are all shared[33].

In the case of entrerprise Reconciliation Office, expenses are on the contrary chargeable to the employer: BetrVG; § 76.

3.Conciliation and Mediation in Labor Collective Conflicts

3.1 Idea and Content

Between Conciliation and Mediation agreements there exist remarkable common aspects (particularly Chapter III.2 a): In both proceedings there is at first an attempt to unify the parties. Failed the unification by conciliation, the Conciliator proposes a solution acceptable to the parties. While the conciliation parties may accept now in advance now later the proposal, there exists no such possibility in Mediation. Unlike conciliator, Mediator is just charged whit the task of a middleman[34].

3.2 Extent of Implication and Application

a. **According to the matter of the conflicts**

In wage conciliation and Conciliation through the Reconciliation Office in Entreprise Legislation there is quite a predominance for the solution of interests and after that in all the cases for the judicial conflict.

However in enterprise conciliation the Reconciliation Office has to clear up preliminary questions so as to set judicial antecedents before entering into the solution of interests[35]. The conclusions of the Reconciliation Office may be contested (seen in Ch II.1) before the Labor Legislation by reasons of legal defects or in a limited way, of overstepping (BetrVG § 76 Sec 5 Par 4).

There has been scarce practical experiences in Germany about Mediation in (labor) legislation. They should get a field of application for some commitment about interests without entering into legal questions[36].

b. According to the employer

Conciliations in wage conflicts take place for workers in the private economy areas and for the employees and clerks in the State Services. Functionaries have Coalition Laws (GG Art 9 Sec 3 and

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[33] Löwisch, Arbeitskampf-und Schlichtungsrecht (Labor Dispute and Conciliation Laws) p 472, Ann 43

[34] Albrecht, Mediation im Arbeitsrecht (Mediation in Labor Law), p 30 with Data

[35] Berg, in Däubler/Kittner/Klebe, BetrVG, 7. Ed 2000, § 76 Ann 14; Fitting/Kaiser/Heither/Engels, Betriebsverfassungsgesetz (Enterprise Statement Law) 20. Ed 2000, § 76 Ann 76, Ann 58 ff.

[36] Detailed Albrecht, Mediation und Arbeitsrecht (Mediation and Labor Law), p 33 ff.

Functionarial Federal Legislation § 91) although wage agreementst have no validity for them. More often their salary (Salary Federal Legislation § 2) and other labor conditions are regulated by the Legislator[37]. Surely the Federal Personnel Agreement Law (BpersVG § 4) and the correspondig Personnel Agreement Law of the regions are applied, so the enterprise Conciliation through Reconciliation Offices in the Administration of Public Services would also have, for functionaries, basical competence. The Legal co-management of the Personnel Committees is however restrictive: BpersG § 74.

c. Other Restrictions

The fact that Conciliation in German Legal Labor is free will and ovewrwhelmingly dependant on the settlements between parties, establishes also the extent of implication area. It corresponds with the structure of the wage arrangements, which are, as Regional Arrangements, prevailing for a wide extent of implication (Ch I.3). Conciliation on wages for company agreements are however also possible and do commonly exist. State (free will) conciliation are the most frequent. (see Chapter III.3.4).

Conciliation through the Enterprise Reconciliation Office is necessary related to the enterprise or to the employer.

3.3 Proceedings of the Conciliation Settlement

a. Organ of the Conciliation Office

Quite often in Conciliation Agreements a President with right to vote is introduced, who may take the decision in case of equallity. When they do not agree on the President, the election proceedings are changed by several ways, from doing by lots (Metal Industry) about an alternative way for electing a President with right to vote (Public Service Official) up to the provision of the President by a third part; such is the elective way in Printing Industry for presidents for the Federal Jurisdiction. In conciliation settlements in the Chemistry industry such elective way of an non-party president with right to vote is wholly rejected and a member of one or the other party is provided. In this case advice and decision for conciliation does not change unless wage negotiations should continue in other place and with other persons[38].

b. Introduction to Conciliation Proceedings

In times Conciliation proceedings oftenly foresaw that conciliation would follow automatically a failed wage bargaining so as to reach to the obligatory peace through legislation[39], but now conciliation as a rule only proceeds when there is a calling for it. It is frequently fixed that a calling from one side is enough (Oficial Services, Building,

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[37] Kocher, Arbitrato e conciliazione nel diritto del lavoro tedesco, Diritto del Lavoro e di Relazioni Industriali (Arbitrage and Conciliation in Labor Rights in Germany, Labor Rights and Industrial Relations) 2000, p 463, 478 ff. With ulterior data.

[38] Zur Schlichtung in der Chemie: Eich, Tarifverträge und Sozialpartnerbeziehungen am Beispiel der chemischen Industrie (Wage agreements and relation between parties, for example in Chemistry) NZA 1995, p 149, 153.

[39] Knevels, Das Schlichtungsverfahren in der Bundesrepublik (Conciliation Proceedings in the Federal Republic), ZTR 1988, p 408, 409 f.; Kirchner, Die neue Schlichtungs- und Schiedsvereinbarung in der Metallindustrie (New Settlements in Conciliation and Arbitrage in Metal Industry), RdA 1980, p 129 ff.

Chemical industry, Printing). There are partially rejections to any form of obligatory acceptance; a normal calling for conciliation or the other party acceptance is prefered to. (Metal industry).

c. Conciliation term and peace obligation

So as to go into the common proceedings, the calling and actualization of the conciliation , a non regular rule is to foresee a term. The aim of the conciliation is to give predominance to the assistence of the parties for an unification and in the second place the solution of the conflicts by the concilation verdict. Thus when the concialitation proceedings actualize themselves in term, the proposed proceedings would generally make possible the unity of the parties. It corresponds to an orderly actualization that the conciliators could listen to the parties; they have the right to receive information and to invite experts.

The scope of the **peace obligation** (in I.3) depends on the formulation of those conciliating agreements. Oftenly the suscribed concialiating agreements forbid labor disputations until conciliation proceedings should arrive to an end (Public Services, Building, Chemical industry). In Metal industry the peace obligation is on the contrary fully independent on the actualization that the conciliation has fixed: it finishes in all cases four weeks after de term of the wage agreement . When the term of the peace obligation is over, the Trade Union may step ahead in the labor dispute. Whatever the actualized proceedings are they fall under the Statutes of the respective Unions.

d. End and Effects of the conciliation

As soon as the negotiations of the conciliatiors arrive to an unification, the conciliation proceedings end up. A part of the conciliating agreements determines that the unification should be suscribed and signed by the agents of the parties (for instance Building and Metal industry).

When the unification has no value, the conciliation accordance generally forsees a verdict from the Conciliators. The assumptions for the realization of the conciliation verdict are regulated and especified in detail in the conciliation accordance. The conciliation verdict is written down and signed by the participants (President and members).

The verdict of arbitrage is only obligatory when the wage parties have agreed before about it (for intance, Building, Printing, Metal industry) or when they do it later. Besides the conciliation accordance establishes that with a qualified majority the conciliation verdict should be unanimously supported. Yet a majority in the Conciliation Office is enough for Chemical industry. When no conciliation verdict during the foreseen term occurs or it was not decided, the conciliation proceedings as a rule como to an end. The dispute about whether in the conciliation proceedings an obligatory regulation for the parties should be found and which subject be under the competence of such regulation could enter in contradiction with the wage agreement, the Labor Jurisdiction according ArbGG § 2 Sec 1 Nr 1 shall have the decision upon it (on the legal nature on Conciliation Settlements, III.2.1 b). According to this prescription , the legality and obligation of a conciliation accordance are established in ArbGG § 2 Sec 1 Nr 1[40].

3.4 Proceedings in State Conciliation – Overview

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[40] New items in Löwisch, Arbeitskampf- und Schlichtungsrecht (Labor Dispute), p 472 ff., Ann 44 ff.; MünchArbR/Otto, § 295, Ann 18 ff.

When matched with the conciliation settlements, State (free will) conciliation has scarce signification and its proceedings are not essencially different from the former; that is the only important reason for its overview and its practical exposition. It is exposed in Legal Advisory Control Nr 35 from 1949[41].

The Conciliation Comitee is composed by a President and up to five members from each party. To make negotiations easier there oftenly are no more than three persons for party. They can anyway interchange advice with similar agents (for instance those of the wage comissions)[42]. The President is elected from a list of the Federal Labor authorities and both parties must accept him, who shall be in charge during three years. As a Federal Referee he is assumed to have a background of wide expertise in productive subjects, labor and labor conditions. Other considerations include offcials of the same Labor Authority, jurymen or other expert people on Legal working.

The proceedings are strictly free will. So the conciliation judgment is similar to the majority of Conciliation accordances only in the obligatory condition, when the parties are previouly subjected to or they decide later to be subjected. In practice they try to make positions as close as possible so on esential points they are able to get a wide consensus.

3.5 Enterprise Reconciliation Offices Proceedings – Overview

In order to solve conflicts through the Reconciliation Office according to the Enterprise Legislation, the most important fundamental proceedings should be comprehensively and also complementary exposed[43]. It is a question here of solving conflicts on the exclusive enterprise level. It is assumed that the Enterprise Comitee has a right for co-management above all upon the so-called "social subjects", according to BetrVG § 87 (for instance Enterprise Orders, Situation and Limits, also Working-time length, Wages) and besides the so-called "Social Planning", according to BetrVG § 111, which includes foreseeing compensating payments because of dismissals to a great number of workers.

Entperprise Reconciliation Office is formed anew case by case for each conflict and ends its existence when there is a decision on the conlflict: BetrVG § 76. There has been foreseen a legal possibility of creating a steady Reconciliation Office (BetrVG § 76, Sec 1, Art 2) or in its place a Conciliation Wage Board (BetrVG § 76, Sec 8), but it has been in practice scarcely used . The Reconciliation Office establishes an equal number of members who are appointed from the Enterprise Comitee on one side and from the employers on the other. Two or three more member from each side may be added before very complicated cases.

As a rule, the big problem comes when a neutral president, who has been added so as to get unification, just in a doubtful case has in the Enterprise Board the decisive vote. When the enterprise parties have not agreed upon such person, both parties, that is the Enterprise Comitee and the employers, propose his appointement before the Labor

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[41] In items in Löwisch, Arbeitskampf- und Schlichtungsrecht (Id) p 477 ff., Ann 57 ff.; MünchArbR/Otto, § 296, Ann 1 ff.

[42] In items in Löwisch, Arbeitskampf- und Schlichtungsrecht (Id) p 477 ff., Ann 57 ff.; MünchArbR/Otto, § 296, Ann 1 ff.

[43] Data upon Commentaries, for instance Berg in Däubler/Kittner/Klebe, BetrVG, § 76 Ann 1 ff.; Fitting/Kaiser/Heither/Engels, Betriebsverfassungsgesetz (Enterprise Statement Law), § 76 Ann 1 ff.; embracing Pünnel/Isenhardt, Die Einigungsstelle des (The Unification Office of) BetrVG 1972, 4.Ed 1977; also recent Kocher, Arbitrato e conciliazione nel diritto del lavoro tedesco, Diritto del Lavoro e di Relazioni Industriali Industriali (Arbitrage and Conciliation in Labor Rights in Germany, Labor Rights and Industrial Relations) 2000, p 463, 469 ff. and 475 ff.

Jurisdiction. The same reference is valuable when disaccordances upon the number of members: BetrVG § 76 Sec 2. As a rule the president of the Reconciliation Office is a Labor Judge.

The proceedings of the Reconciliation Office are legally unformal. The Enterprise Legislation scarcely fixes, in BetrVG § 76, Sec 3, some reference frames, for instance, on the modality for voting. The conclusions of the Unificacion board are written down. Their decisions should take into account the interests of the Enterprises; that is the interests of economic importance and those of the employees should be equally balanced. When the Reconciliation Office surpasses its own competences, for instance when basic co-management does not fit with the Enterprise Committee, their results can be invalidated. It is the same when the Reconciliation Office surrpasses its own power: BetrVG, § 76, Sec 5.

Investigations show that Reconciliation Offices are able to solving practical enterprise conflicts in short term[44]. The adventage of these proceedings consists in that the Reconciliation Office has a direct way out to an entrerprise conflict, just like for exemple the Labor Legislation. So as a rule it places itself in the same enterprise and negotiate, let's say, "around the table". Therefore the Reconciliation Office corresponds itself to the logic of the German Labor Legislation, which rests on the discours and consensus between the parties.

3.6 Mediation proceedings - Overview

In german law, or working legislation, there is no practical experiences with Mediation which could serve as examples and those important basic proceedings could only be reflected by those representative supporting some USA debates[45]. Basic proceedings with a legal background are: time limitation in a suit (or abatement), openly and confidentially. With psycological background: the formulation of interests, a well formed consensus, working with opposed interests. The legal vinculation of a settlement rests equally as the common proceedings wholly at the discretion of the parties.

4. Arbitrage Jurisdiction

4.1 Idea and characteristics

Arbitrage Jurisdiction means that a third one, the so-called Referee, decides by a verdict of arbitrage on a conflict (see under III.2.1 a). Between Conciliation and Mediation on one side and Arbitrage Jurisdiction on the other[46] there only exists little similarity. The Arbitrage proceedings rest esentially close to the State Legal Proceedings. The

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44 Data in Pünnel/Isenhardt, Die Einigungsstelle (The Unification Oficce) des BetrVG 1972, p 5 f., Ann 6 ff.

45 Data in Pünnel/Isenhardt, Die Einigungsstelle (The Unification Oficce) des BetrVG 1972, p 5 f., Ann 6 ff.

46 Recient on Verbindung von Schiedsverfahren mit Formen der Mediation (Settlements on Arbitrage proceedings): Berger, Integration mediativer Elemente in das Schiedsverfahren, Recht der Internationalen Wirtschaft (Mediative Integration Element in Arbitrage Proceeding, Law for International Economy) (RIW) 2001, p 881 ff.

basic laws are exclusive of Labor Legislation §§ 101-110; the general prescriptions of the Civil Procesal Order on Arbitrage Jurisdiction (ZPO §§ 1025-1066) are expressely adopted : (ArbGG, § 101, Sec 3)[47].

4.2 Extent of Application

In Labor Law, Arbitrage Jurisdiction is only permitted under two assumptions: one, in disputes which come from wage agreements – in the majority of cases from the obligatory part of the wage agreements (ArbGG, § 101 Sec 101); secondly, for determined groups of professions, which in ArbGG, § 101, Sec 2 are numbered (Theatre actors, Movie makers, Captains and Ship tripulation), so traditions and especialities of these professional groups are taken into account. The 1948 Arbitrage Jurisdiction on Theatre has practical significance above all on wage settlements in the 1984 statements [47].

4.3 Proceedings

Arbitrage Jurisdiction depends on an arbitrage agreement of the wage parties, whose regulation is detaliled (ArbGG § 103). Obligatory legal prescription are in ArbGG, § 103 and § 105: Paired together workers and employers (ArbGG, § 103); Hearing the parties (ArbGG, § 105); Consideration of proofs (ArbGG, § 106); Comparisons (ArbGG, § 107); Arbitrage verdict, Actualization of Obligations and Claimings (ArbgGG §§108 –110).

4.4 The Arbitrage Verdict

As long as the arbitrage agreement is not changed, arbitrage verdict is put into force by simple majority (ArbGG, § 108 Sec 1) and all the members sign it (ArbGG § 108 Sec 2). The actualization of obligations only occurs when its actualization is full explicit by the competent Labor Law in the arbitrage verdict (ArbGG, § 109). It is possible a claiming before Labor Jurisdiction against a legal rejection (ArbGG, § 110)[48].

IV. Appraisal of the possibility of outsider solution in collective labor conflicts

1. Factual meaning, empirical data

1.1 Conciliation and Mediation

a. Conciliation

There is not enough data about how much annual, or in another related term, conciliations are factual actualized. However there comes out that in nearly all big branches of private economy and in the public services,

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47 Detailed also upon Aditions: Germelmann/Mattes/Prütting, Arbeitsgerichtsgesetz (Arbitrage Jurisdiction) § 101 Ann 1 ff; Grunsky, Arbeitsgerichtsgesetz (Labor Jurisdiction), § 101Ann 1 ff; also Kocher, Arbitrato e conciliazione nel diritto del lavoro tedesco, Diritto del Lavoro e di Relazioni Industriali (Arbitrage and Concilitaion in Labor Rights in Germany, Labor Rights and Industrial Relations) 2000, S. 463, 465 ff.

48 On Legislation Dütz, Arbeitsrechtliche Schiedsgutachten in der jüngeren höchstrichterlichen Rechtsprechung, Festschrift Arbeitsgerichtsbarkeit (Survey on Jurisdiction Labor Arbitration on youngers high selective Legislation, Miscellania on Legislation) Relations Rheinland-Pfalz, 1999, S. 575 ff.

conciliations pacts were settled through the parties[49]. This means that for nearly two thirds of employers wage agreements ara valuable, in which the parties have suscribed conciliation settlements. This means above all that they are not nessarily applied to wage conflicts but that in Germany there is no one year that in some place a wage agreement be not confirmed through a conciliation settlement. This is similar to why the cuantitative significance of the wage autonomy is just like before: Each year nearly 8000 wage agreements are renewd or anew agreed (comp Chap I.3).

On the contrary State conciliations have been used in limited extension only. During 1988-1995 only 50 Conciliation proceedings have been applied by the so-called Federal Referees, in some Federal regions[50].

According to new data from a regular survey upon two years term, in 1999/2000 a scarce 16% of all enterprises (with Enterprise Comitees) entered into proceedings of the enterprise Reconciliation Office[51].

b. Mediation

There are no data about Mediation in collective (Labor) Law because there is not (yet) in German Labor Law such form of external Conciliation[52].

1.2 Arbitrage Jurisdiction

Arbitrage Jurisdiction as it has already been exposed (under III.4) is being active in Labor Law under very restrictive assumptions only. Its cuantitative significance, matched with the solution of conflicts in the labor jurisdiction, is extraordinay scarce. There are not statistics at sight.

2. Critical Appraisal

2.1 Previous note: Factual meaning of Conciliation Proceedings

In the praxis of German Labor Law, settled conciliations under the Wage Laws and enterprise conciliations through Reconciliation Offices as they were basically exposed in former Chapters, play an important rol.

2.2 Settled Conciliation on Wages

It shall be briefly again underlined that Wage Conciliation presents a double function[53]. Its determinant aim is to lessen work disputes or to share in its ending. After that it looks for its own stability by searching of a commitment

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[49] Data on Bundesarbeitsministeriums (Federal Labor Ministeries) June 2000 (completed with data from) Gamillscheg Kollektives Arbeitsrecht (Collective Labor Law) p 1036.

[50] Löwisch, Arbeitskampf- und Schlichtungsrecht (Labor Dispute Law and Conciliation Law) p 458, Ann 5; in Berlin/Branderburg , according to data from Federal Conciliatior, June 2000, Dr. Horst Weigand, nearly 10 Proceedings per year for individuals employer or small branches.

[51] Dorsch-Schweizer/Schulten, Betriebs- und Personalräte zwischen Belegschaft, Arbeitgeber und Gewerkschaft (Enterprise and Personnel Committees among Staff, Employer and Trade Union) , WSI-Mitteilungen 2001, p 113, 119; the percent of the Labor Legislation Proceedings rest on 24% according to this enquiry.

[52] Upon skepticism on future in Individual and Statemens of Enterprise Law: Albrecht, Mediation im Arbeitsrecht (Mediation in Labor Law), p 122 f; rather open: M. Schubert, Mediation im Arbeitsrecht und in der Betriebsratsarbeit, Arbeitsrecht im Betrieb (Mediation in Labor Law and Enterprise Work, Labor Law in Enterprises) (AiB), p 524, 526 ff.

regarding interests[54]. To understand the legal situation in Germany it is important to see that unlike most of the other countries and in accordance with a general interpretation of the law, a peace obligation could remain implied in the wage agreement. (Chapter I.3). It follows that a peace obligation about wages could be enlarged or shortened, according to how conciliation proceedings had been carried out.

In practical wage affairs, there are branches that have firmly established Conciliation as the way for solving the wage conflicts. Chemical industry is good example, with an automatic calling for, members of both parties nominated in pairs for the conciliation commission, which decides without neutral president through majority and where the end of the peace obligation comes when the failing of Conciliation is recognized. In other branches the Conciliation proceedings are carried out in such a way that the solution of the conflicts includes the previous acceptance of labor disputes during the wage negotiations. The example is here the Metal industry, which as before plays a pionering rol in both actualization types of wage arrangements.There is no dismissal threats (automatic conciliation), the right to voting of the two presidents is decided by lots and the peace obligation finishes independently of the application of the proceedings, four weeks after the term of the wage agreements.

The Conciliation on wages in German Labor Law is accepted with this difference and so it is valuable for the future. The fundamentals of a settlement of Conciliation modality through wage parties make possible an open and flexible accomodation and new requirementes and developments.

2.3 Enterprise conciliation by the Reconciliation Office

Enterprise Conciliation by Reconciliation Office looks for another aim. It is about to remove blocades that emerge when discussing affairs on enterprise co-management (Ch III.3.6, esp). In spite of critics about details, for instance the rise of costs, the Reconciliation Office is absolutly outstanding as an Organ that is in situation of solving enterprise conflicts in an easy and favorable way[55]. There are not any political or legal tendencies so as to recognize possible future changes in this fundamental and possitive appraisal and practical significance of a Reconciliation Office.

2.4 Mediation

Mediation up to now in German Labor Law has little significance (under III.3.6); it could however have in the future a greater valuable situation, by reason of its transparency. The limitation comes from the scarce area that is left for mediating, where other proceedings, like Reconciliation Office, may lead to satisfactory solutions. In

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53 Sozialwissenschaftliche Untersuchungen in Deutschland (Social Sciences Research in Germany): Külp, Der Einfluss von Schlichtungsformen auf Verlauf und Ergebnis von Tarif- und Schlichtungsverhandlungen (effects of Conciliation forms in Course and Results of Negotaitions on Conciliations and Wages) 1972, p 9 ff, 112 ff; B. Keller, Theorien über den Einfluss des Neutralen auf Schlichtungsverhandlungen (Theories on Effects of Neutral and Conciliating Negotiations), 1973, p 9 ff, 112 ff, both with Data on the angloamerican Debate.

54 Münch ArbR/Otto, § 294, Ann 5; also com. Gamillscheg, Kollektives Arbeitsrecht (Collective Labor Law) p 1299.

55 Equally the appraisal of Kocher, Arbitrato e conciliazione nel diritto del lavoro tedesco, Diritto del Lavoro e di Relazioni Industriali (Arbitrage and Conciliation in Labor Rights in Germany, Labor Rights and Induatrial Relations) 2000, p 463, 489 ff.; more references in Hase/von Neumann-Cosel/Rupp/Teppich, Handbuch für die Einigungsstelle (Handbook of Unification Offices) 1990, p 134 ff.

individual legal labor, for which there exists at disposition an efficient Labor Legislation, so as to counterbalance the employee power, the initiative for mediating should come from the employeer. Even with those limitations Mediation could play in the future a complementary function for other existing Conciliation proceedings[56].

2.5 Arbitrage Jurisdiction

By reasons of its very limited extent of competence, it is assumed that Arbitrage Jurisdiction in German Laws has its own space and there is no controversy on political legislation upon its goals. It is recognized in narrow areas.

V. External ways for solving Labor Conflicts at European extent

1. Situation at present

Until now there are not in Germany valuable examples of external proceedings for solving labor conflicts within european dimension. Settlements for a transformation of the orientative line on European Enterprise Committees, EG 94/45[57], or also European Enterprise Committee Settlements themselves on conceptual themes[58] came into consessus in the agreement of parties without intervention of a third instance. That is why neither Definition of the Concilition nor of the Mediation suit.

2. Perspectives

Increasing European enterprise settlements, even on "hot affairs" as the job security[59], are now valuable, as indications of an increasing necessity of Conciliation possibilities and Conciliation competence. Such a fact points to the steady dynamics of the growing number of Euroepean enterprises[60] and with that, the link with a greater number of conflicts of transnational dimensions[61], so as the forming of participating laws[62] just in case of dissensions for a

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56 Com. Albrecht, Mediation im Arbeitsrecht (Mediation in Labor Law) p 122 f. With Data; also Schubert, Mediation im Arbeitsrecht und in der Betriebsratsarbeit? (Madiation in Labor Law and in Labor Enterprise Committee?) AiB 2000, p 524 ff.; for Perspectives, also Kocher, Arbitrato e conciliazione nel diritto del lavoro tedesco, Diritto del Lavoro e di Relazioni Industriali (Arbitrage and Conciliation in Labor Rights in Germany, Labor Rights and Industrial Relations) 2000, p 463, 489 ff.

57 Newest Lecher/Platzer/Rüb/Weiner, Verhandelte Europäisierung (European Negotiation) 2001.

58 Schiek, Europäische Betriebsvereinbarungen (European Enterprise Settlements) RdA 2001, p 218, 221

59 Schiek, Fn. 56

60 Newest Altmeyer, Interessenmanager vor neuen Herausforderungen (Employer Interests and new Challenges) 2001, p 22 ff.

61 Com. Conflict of Renault-Vilvoorde Arbeitsrechtsbank van Brussel (Bank Legal Law of Brussels) 3.4.1997, AuR 1997, p 366; upon the Debate in Germany: Kolvenbach, Massenentlassung bei Renault in Belgien (Dismissing in the mass in Belgic) NZA 1997, p 695 ff; Lorenz/Zum Felde, Der Europäische Betriebsrat und die Schließung des Renault-Werkes in Vilvoorde/Belgian (Enterprise Committee and Conciliation in Renault of Vilvoorde/Belgic) RdA 1998, p 168 ff.

suitable possibility of solutions which could be prepared, as long as they do not exist. EG Art 139 faces the anterior necessity on the enterprise transnational level for social dialogues between social partners. There was until now the European Motor Commission with five refering settlements which were transformed according to the orientative line[63]. Above all they are actualized tendencies that make the Commission to turn back to its stronger and active rol[64].

From the background of the increasing structure of the solution of conclicts, the Conciliation proceedings on European level have a hope for the acceptation of the social agents and other social forces as they could come to be really free and to complement, not to take the place of, the existing mechanisms for the solution of conflicts. Legal ways should neither be passed over nor shortened. Under this assumptions no serious objections against "Institutional offering" from experts on conciliation should exist. Similar to gremios, the other judicative ordinance (see Chapter II.3), they are foreigners to the German Law (similar above all to the State Conciliation, Chap III.1 and III.4). However the complexity of the transnational conflicts, difficults in language as much as cultural and legal conditions of the respective countries[65], could all speak for the raising of an "Institutional Conciliation Gremio".

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62 EU-Richtlinienvorschlag für die Information und Anhörung der Arbeitnehmer (Europium-Correct Line Proposal so as to informing and hearing the workmen) : Deinert, Vorschlag für eine europäische Mitbestimmungsrichtlinie und Umsetzungsbedarf im Betriebsverfassungsgesetz (A Proposal for an European Correct Line in co-management, Statement Labor Law), NZA 1999, p 200 ff.; Giesen, EU-Richtlinienvorschlag zur Information und Anhörung der Arbeitnehmer (Europium-Correct Line Proposal on Information and Hearing of workers) RdA 2000, p 298 ff.

63 Here detailes Zachert, Europäische Tarifverträge – von korporatistischer zu autonomer Normsetzung?, Festschrift für Schaub (European Agreements on Wages - from corporative to autonomous Regulation?)1998, p 811, 812 ff.

64 Eberwein/Tholen/Schuster, Die Europäisierung der Arbeitsbeziehungen als politisch-sozialer Protest (Europe builds the Labor conditions as a Socio-Political Protest) p 103 f.

65 Altmeyer, Interkulturelle Probleme bei transnationalen Fusionen (Intercultural Problems in Translational Merging) WSI-Mitteilungen (WSI-Participation) 2000, p 646 ff