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15 Jan.2022

Brief Country Report for Germany

1. Introduction to the country and its legal framework

a. overview

- i. The German legal system is based on the civil law system.
- ii. Court structure

Germany is a federal republic which consists of 16 federal states, so called Länder. The legal system includes federal law, state law and local law. We have five hierarchies of courts, each with its own specific jurisdictions and codes of procedure. Three of them are specialized in administrative law matters and two in private law matters. The finance courts have jurisdiction over federal tax matters, the social courts over social law matters and the administrative courts over all administrative matters. The labor courts have jurisdiction over private labor law disputes. The ordinary courts are competent in civil and criminal law matters. All jurisdictions but the finance court have three levels, the first instance, the high or appeal court and the federal court., whose jurisdiction is restricted on the application of federal law.

- iii. The JDR process is implemented on all levels of the judiciary, except for the constitutional courts.

2. Objectives of the JDR process

- a. The impetus to implement the JDR process into the legal system in Germany was developed in the 1990's by judges with the promotion of some ministries of justice in some German federal states. In 2002 judges in some courts at the lower level and at the district level began to offer mediation in cases when the claim was

already brought to court and the defendant had filed his defense. The idea was that conflicting parties are experts on their own conflict and would be able to find a solution with the support of a neutral third party even after the conflict had been brought before the court. The obligation of judges is solving the conflict not only finding the applicable law to the legal conflict.

- b. The outcome of the early projects of judges offering mediation was very convincing by a success rate of about 70 % of all cases brought into the project. These cases were on civil law in general. At that time there was no law allowing judges to act as mediators in court proceedings.

3. Legal framework for the JDR process

- a. The source of the courts authority is written in the codes of procedure like for the civil procedure in The code of Civil procedure section 278, Paragraph 5:

Court may refer the parties for the conciliation hearing, as well as for other attempts at resolving the dispute to a judge delegated or this purpose, who is not authorized to take a decision (Güterichter/ conciliation judges).

The conciliation judge may avail himself of all methods of conflict solution, including mediation.

4. Details of the JDR process

a. Description of the JDR process

- i. As from the beginning of the pilot projects in court dispute resolution concentrate on judicial mediation. The person who conducts the mediation is a judge, but he or she is not the deciding judge on the case. Of course, there also exists mediation as a scheme for extrajudicial resolution of disputes (extrajudicial mediation and we have the possibility of court annexed mediation or conciliation when the court proceedings have already started. The court is empowered to propose mediation or other out-of-court settlement of the dispute. If the parties agree to enter into such a proceeding, the court is entitled to stay the court proceeding and if the settlement is successful terminate the court proceeding.

Judicial mediation is practised at the most. Early neutral evaluation done by a non deciding judge or a lawyer after court proceedings have started might be part of the mediation process. But here the judge mediator will moderate the opinion

of the lawyers on the legal aspects on the outcome of the case and will not give his own legal evaluation.

- ii. The mediation procedure in court is based on the main principles: voluntariness, confidentiality, self-responsibility (Parties themselves are in charge for the solution of their dispute), institutional separation of the mediator and the judge who decides the case.
The deciding judge may propose a judicial mediation as well as the parties and/or their lawyers. As a consequence of the voluntary nature the judge responsible for the court proceedings only refers the parties to the mediator if they agree.
In the civil courts of Berlin, where I used to work as a judge and a judicial mediator, we have the practice that the deciding judge can hand over the case to the judge mediator in order to find out, if the parties agree to a mediation process. He or she can better inform and convince the parties of the advantages of mediation.
- iii. In our system court based mediation is done by judges who have been trained in mediation.

b. Eligibility criteria

- i. The JDR Process is optional. In some "Länder" neighbourhood claims have to be dealt with in a settlement institution before being brought to court.
- ii. The court can recommend the JDR process at any time of the court proceedings. Most of the cases have been recommended at a very early stage, some of them are recommended after court proceedings have lasted for long, evidence has been taken but the case is still not ready for judgement.

c. The training of judges

The training of judges in Germany is organized in the ministries of justice in the federal states, but one could also be trained in other mediation centers.
The training in the state of Berlin is done by me and another judge and a psychologist. The training lasts for eight days. In addition, we offer supervision groups where mediation cases are being discussed in order to enhance the skills on the mediation tools.

d. Statistics

As a coordinator for mediation proceedings at the civil courts of Berlin from 2009 to 2021 I was in charge of the statistics in Berlin for the civil court. Generally speaking around 600 to 700 cases were referred to judicial mediation of all civil courts (including

the Kammergericht as the highest civil court in Berlin). Around 65-70 % of those cases were successfully solved.

There is a federal statistic on all courts of Germany and mediation proceedings. The validity of this statistic is very much discussed. But generally speaking it very much varies from federal state and from individual courts whether parties and courts take advantage of mediation proceedings.