The Dispute Resolution Review

Third Edition

Editor
Richard Clark

Law Business Research

The Dispute Resolution Review

This article was first published in The Dispute Resolution Review, Third Edition (published in April 2011 – editor Richard Clark).

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN: 978-1-907606-05-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: +44 844 2480 112

Chapter 35

LUXEMBOURG

Léon Gloden[*]

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

i The courts

Luxembourg has a written Constitution that originates back to 17 October 1868 but which has been periodically amended. According to Article 51 of the Constitution, Luxembourg is a parliamentary democracy. As such it is governed by the principle of the separation of powers, namely the executive power, the legislative power and the judicial power.

According to Article 84 of the Constitution, any disputes regarding civil rights are to be ruled upon exclusively by the courts. This includes matters to which the government or any governmental or municipal organisation are a party. Depending on the subject matter, disputes are ruled upon by the judiciary or by the administrative courts. The latter, pursuant to Article 95bis of the Constitution, has jurisdiction on any matters dealing with administrative or tax disputes.

The courts also rule upon the compatibility of laws with the Constitution. Pursuant to Article 95ter of the Constitution, disputes on this subject are ruled upon by the Constitutional Court to which courts must submit any such matter.

The lower courts (the *tribunaux de justice de paix* of Luxembourg City, Diekirch and Esch-sur-Alzette as well as the district courts of Luxembourg City and Diekirch) sit in civil, commercial and criminal matters. The lower courts have jurisdiction to judge any cases where the amount involved does not exceed €10,000 (their decisions are final when the amount awarded is below €2,000). Appeal against a judgment rendered by a lower court is lodged with the district court.

The summary judge may award an interim injunction if: (1) the claim is urgent, (2) the order is sought to avert a situation that would cause irreparable harm to the

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plaintiff, or (3) the order is sought to remedy an unlawful situation that has already occurred. Such an order is immediately enforceable notwithstanding any appeal lodged against it. The interim order does not have any influence on the merits of the case, and may be revoked or amended if new elements, whether legal or factual, arise. The summary judge cannot award any compensation for any harm caused. The summary judge will only assess *prima facie* whether a violation of law has occurred or not.

The specialised courts are the labour courts, which are part of the *tribunaux de justice de paix* sitting in labour issues, and the *tribunal arbitral des assurances sociales*, dealing with cases relating to social security. Appeals against judgments of the *tribunal arbitral des assurances sociales* are lodged with the High Council for Social Insurance.

The Superior Court of Justice comprises the Court of Appeal (which hears appeals against the judgments of the district and labour courts) and the Supreme Court. An action may only be brought before the Supreme Court in the event of a violation of procedural law. It has no jurisdiction to reconsider the facts of a case.

Fundamental principles governing the courts set forth in the Constitution include:

a the principle of legality of the courts: no jurisdiction may be set up other than by the law (Article 86 of the Constitution);

b the rule that hearings in the courts must be open to the public except as may be decided upon in matters contravening public policy or morality (Article 88 of the Constitution);

c the rule that all judgments must be reasoned (Article 89 of the Constitution); and

d the principle of independence of judges.

The fundamental rule, according to which the courts must be impartial, is expressed in Article 6 of the Convention on Human Rights, in Article 47 of the Charter of the Fundamental rights of the European Union, as well as in the terms of the oath to be sworn by judges when being appointed as set forth in Article 112 of the Law on Judicial Organisation.

Pursuant to Article 4 of the Civil Code, courts must render justice, and are not allowed to refuse judgment on the basis of alleged silence, lack of clarity or insufficiency of the law.

All judges are professional judges. There is no jury system and any lay judges only serve as assistants in the lower labour courts and the courts ruling on social security matters.

ii The legal system

As regards substance of Luxembourg law, the system of law is classified as a civil law system. The Luxembourg Civil Code was introduced in 1804 under the then French regime and continues to be in force although it has been frequently and substantially amended. In general, any amendments to the Civil Code largely follow changes to the French Civil Code. The Civil Procedure Code ('the CPC'), originally introduced in 1807, was frequently amended and substantially revised in 1996 as the Nouveau code de procédure civile. The Commercial Code, also introduced in 1807 under the

French regime, received substantial ingredients from Belgian law. The Criminal Code, in turn initially introduced under the French regime, was widely amended in 1879, largely following the then-existing Belgian Criminal Code. Corporate law was introduced in 1915, broadly on the pattern of the then-existing Belgian law on companies but is nowadays substantially amended and completed pursuant to EC Directives. Tax law, as it stands presently, was introduced during the German occupation (1940 to 1944) and, despite substantial changes, is still influenced by German law, whereas indirect taxes remain close to the French system. Value-added tax (VAT) law is entirely based on EU directives.

Like all civil law systems, it is the written law that is paramount for the courts. Precedents ('jurisprudence') and scholarly literature ('doctrine') assist in the interpretation of the law and serve as guidance to the courts. Given the origin of the various fields of Luxembourg law, the courts, although looking in the first place to precedents in Luxembourg jurisprudence and to doctrine on Luxembourg law, will further be guided by French, Belgian and, where appropriate, German legal literature.

II COURT PROCEDURE

i Overview of court procedure

The CPC contains most of the rules governing proceedings before the courts.

ii Procedures and time frames

Both in the instances before the district courts and the Court of Appeal, a judge is appointed to conduct the proceedings as *juge de la mise en état*. Pursuant to Article 204 of the CPC, the *juge de la mise en état* determines the time limits necessary for the parties' briefs and their pleadings, based on the nature, urgency and complexity of the case. Time limits would ordinarily be around three months for submission of briefs by the defendant and around two months for the reply of the plaintiff, and similarly for additional replies as may be appropriate. Although such time limits may be extended by the *juge de la mise en état*, if the lawyer of a party does not comply with the instructions of the *juge de la mise en état*, injunctions may be imposed or the hearing may proceed without further delay. After completion of the parties' briefs, the *juge de la mise en état* determines the date of the oral hearings.

He or she may also ask the parties to conclude on a specific point or order investigation measures. An appeal may be lodged within 40 days of the servicing of the judgment.

Before the lower courts or the district courts sitting in commercial matters, the procedure is oral and there is no *juge de la mise en état*.

iii Class actions

No class actions are possible under Luxembourg law. Nevertheless, any professional grouping or representative association that can show a direct, certain and personal interest may bring an action before Luxembourg courts. Joint actions are also authorised and specific laws such as the law on unfair competition practices provide for representative actions.

iv Representation in proceedings

Rules on representation in proceedings depend on the nature of the case and the court having jurisdiction:

a Before the district courts sitting in civil matters and the Court of Appeal, as well as the administrative jurisdictions, with the exception of the government (which may be represented by a public servant before the administrative court), the parties must be represented by a lawyer inscribed on List 1 of the Luxembourg Bar (i.e., a lawyer having successfully finished his or her traineeship).

b Before the district courts dealing with commercial issues and the lower courts, the parties do not need to be represented by a lawyer inscribed on List 1 of the Luxembourg Bar, but may be represented by any qualified lawyer, or by one of the persons as listed in the CPC holding a special proxy (mainly parents). The parties are also entitled to defend themselves if they chose to do so.

If a legal person decides to defend itself, it has to do so through its representative organ, which must have the power and capacity to represent the company in legal proceedings.

v Service out of jurisdiction

When a document with respect to civil or commercial matters is served in another EU Member State, EU Regulation No. 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ('Regulation 1393/2007') applies. Each EU Member State must establish a transmitting agency (the bailiffs and the court registrars in Luxembourg) and a receiving agency (the bailiffs in Luxembourg) competent for the transmission and the receipt of documents. The transmitting agent transmits the document accompanied by a request on a standard form to the receiving agency of the other EU Member State. The receiving agency will then itself serve the document or have it served, either in accordance with the law of the EU Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that EU Member State.

Luxembourg is a party to the Hague Service Convention of 15 November 1965, which applies between Luxembourg and any other contracting party to this Convention. Each contracting state must designate a central authority (the Public Prosecutor at the Superior Court of Justice in Luxembourg), which will undertake to receive requests for service coming from other contracting states. The authority or judicial officer competent under the laws of the contracting state in which the document originates must transmit the document that needs to be served to the Central Authority of the state addressed. The same procedure as the one provided for by Regulation 1393/2007 then applies.

Various bilateral treaties also apply in the case of service of documents between Luxembourg and other foreign countries.

In the absence of any international convention or bilateral treaty, Article 56 of the CPC applies. The bailiff must address a copy of the document to be served by registered letter with a form for acknowledgment of receipt to the domicile or residence of the foreign recipient. If the foreign state does not accept transmission by post of judicial documents to persons established on its territory, the bailiff must address a copy of the document by registered letter with a form for acknowledgment of receipt to the Ministry

of Foreign Affairs, and the document is then served to its recipient by diplomatic means. This is also the case if the party being served is not a natural person.

vi Enforcement of foreign judgments

The following legal instruments provide the procedures to follow for enforcement of foreign judgments from the following respective countries in Luxembourg:

a Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels I Regulation'): EU Member States;

b the Convention of 27 September 1968 on the jurisdiction and enforcement of judgments in civil and commercial matters ('the Brussels Convention'): EU territories excluded from Brussels I Regulation pursuant to Article 355 of the Treaty on the Functioning of the European Union; and

c the Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters ('the Lugano Convention'): Iceland, Norway or Switzerland.

All three legal instruments are broadly similar in content. The party who wishes to enforce a judgment must file a request with the chairman of the district court in which the party against whom the enforcement is sought is domiciled. The procedure is unilateral and will become adversarial only if an appeal is lodged against the *exequatur* judgment. The chairman of the district court is obliged to recognise a foreign judgment unless (1) such recognition is manifestly contrary to public policy in the state in which recognition is sought; (2) the defendant was not served with the document that instituted the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his or her defence; (3) it is irreconcilable with a judgment given in a dispute between the same parties in the state in which recognition is sought; or (4) it is irreconcilable with an earlier judgment given in another state or in a third state involving the same cause of action and the same parties. Provided that the judgment is enforceable in its country of origin, the chairman of the district court will render an *exequatur* order.

In case of uncontested claims within the EU Member States, Regulation No. 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims ('Regulation 805/2004') may apply. Pursuant to Regulation 805/2004, provided that a judgment complies with certain minimum conditions the EU Member State of origin may certify such judgment as a European enforcement order. Further to such certification, the foreign judgment may then be enforced in Luxembourg as if it had been obtained from a Luxembourg court.

In the absence of any EU regulation or treaty, recognition and enforcement of a foreign judgment may be obtained only upon judgment of the Luxembourg district court following the normal procedure. To grant the *exequatur*, the district court must verify that:

a the judgment is enforceable in the foreign country;

b the foreign country had jurisdiction to hear the case according to its own procedural laws;

c the foreign country had jurisdiction, according to Luxembourg international private law, over the matter of the action leading to its order;
d the judgment of the foreign court was not obtained by way of fraud;
e the judgment was granted upon proceedings where the defendant had the opportunity to appear, and if the defendant appeared, to present a defence;
f the applicable procedural rules of the foreign state were complied with;
g the foreign court applied the law applicable to the matter; and
h the judgment is not contrary to Luxembourg public policy.

The law of 23 February 2010 on the mutual recognition of fines permits under certain conditions to execute decision of a jurisdiction of another EU Member State having pronounced a fine on a physical or legal person .

vii Assistance to foreign courts

Under Regulation 1206/2001 of 28 May 2001 on cooperation between the courts of the EU Member States in the taking of evidence in civil or commercial matters ('Regulation 1206/2001'), any court of any EU Member State other than Denmark can request the competent court of another EU Member State to take evidence. The request should be made on a standard form to obtain evidence, which is intended for use in judicial proceedings, whether commenced or contemplated. The execution of a request may only be refused on the basis of one of the grounds provided for in Regulation 1206/2001.

Luxembourg is a party to the Hague Evidence Convention of 18 March 1970, which provides that in civil or commercial matters a judicial authority of a contracting state may, in accordance with the provisions of the law of that state, request the Public Prosecutor at the Superior Court of Justice, by means of a letter of request, to obtain evidence, or to perform some other judicial act.

Luxembourg is also a party to the European Convention on Information on Foreign Law of 7 June 1968, pursuant to which a foreign court from a contracting party may request information on Luxembourg law to the Ministry of Justice. The execution of a request may only be refused if the interests of the requested state are affected by the case giving rise to the request or if it considers that the reply might prejudice its sovereignty or security.

viii Access to court files

In principle, any evidence used by the parties during the judicial proceedings must be added to the court's file, even if it contains information covered by commercial confidentiality. The parties have access to the entirety of the judge's file. If evidence is not relevant to the case, the party may erase such information. If such confidential information is, however, relevant to the case, the party may request that it need only deposit these documents with the court's clerk rather than notifying those documents to the other party, meaning that the other party can access them without receiving a copy.

ix Litigation funding

Court fees are not paid up front, but only once judgment has been rendered.

In principle, the legal costs are borne by the losing party unless the court has decided that both parties shall bear part of the legal costs. The legal costs, called *frais et dépens*, do not include lawyers' fees, which are borne in principle by their clients.

The division of costs may be shared if both parties succeed in their claim; for example, the plaintiff is partially successful in its claim and the defendant in its counteraction. There are no circumstances under which the successful party would not be awarded all costs.

Article 240 of the CPC provides that the court may condemn one of the parties to pay to the other one an indemnity (*indemnité de procédure*) if it considers that it would be unfair for that party to bear costs that are not included in the *frais et dépens*. Usually, the judge imposes an *indemnité de procédure* of between €500 and €2,000 on the losing party depending on the importance of the case. Although the *indemnité de procédure* again does not 'include' the legal costs, such an amount allows the winning party to recover a part of the amount of the lawyer's fees.

Pursuant to the rules of procedure of the Luxembourg Bar, lawyers are prohibited from making their fee entirely contingent on the outcome of a case. However, an agreement that fixes part of the fees by reference to the service rendered but also by referring to the results of the services in the case would be permissible.

In addition, nothing prevents a person from entering into a private insurance contract covering legal costs, and persons with low income may be granted legal aid by the state.

III LEGAL PRACTICE

i Conflicts of interest and Chinese walls

According to Article 33 of the Law of 10 August 1991 relating to the profession of lawyer ('the 1991 Law') a lawyer cannot assist or represent parties with conflicting interests. In addition to the 1991 Law, the rules of procedure of the Luxembourg Bar provide for various recommendations with respect to conflicts of interest:

a a lawyer should refuse multiple mandates when there is a serious risk of conflict at a later stage;

b a lawyer who has advised several parties at a preliminary stage should not represent one of those parties in case of litigation; and

c a lawyer who usually is in charge of the interests of a client should not accept a case against such client and the same applies to a previous client; however, the prohibition disappears with the time passing.

These prohibitions apply unless the clients have agreed to such situation.

The rules on conflict of interest extend to all lawyers working in the same law firm. The establishment of Chinese walls as a solution to conflict of interests is not provided by law; however, in practice sometimes, Chinese walls are set up. The same law firm may represent clients with conflicting interests provided that (1) the clients have been informed and have agreed to such situation and (2) the lawyers working on the case of one client have no access to confidential information on the opposing party.

ii Money laundering, proceeds of crime and funds related to terrorism

The legal framework for anti-money laundering obligations in Luxembourg is set out in the Law of 12 November 2004 relating to the fight against money laundering and against financing of terrorism as amended and supplemented by a Grand-Ducal Decree of 1 February 2010. The law applies to certain professionals, including lawyers in certain circumstances.

Lawyers are subject to anti-money laundering obligations only when:

a assisting in the:
- planning or execution of transactions for their customer concerning the buying and selling of real property or business entities;
- managing of client money, securities or other assets;
- opening or management of bank, savings or securities accounts;
- organisation of contributions necessary for the creation, operation or management of companies; or
- creation, domiciliation, operation or management of trusts, companies or other similar structures,

b acting for and on behalf of their customer in any financial or real estate transaction; or

c providing a service of a trust and company service provider.

Lawyers are not subject to any such professional obligations where they merely act in a capacity as legal advisers and in particular in relation to the preparation and the conduct of judicial proceedings.

The anti-money laundering obligations are as follows:

a identification and verification of the identity of the client and the beneficial owner of the transaction, obtaining information on the purpose and intended nature of the relationship and conducting of ongoing monitoring of the business relationship;

b establishment of adequate and appropriate internal policies and procedures in order to forestall and prevent operations related to money laundering or terrorist financing; and

c cooperation with the Luxembourg authorities in charge of the fight against money laundering and against the financing of the terrorism.

In that respect, any professional secrecy or confidentiality duties to which a professional may be subject to are lifted. This general obligation obliges professionals to respond to requests from the Public Prosecutor and provide him or her with all necessary information and to inform the Public Prosecutor on their own initiative of any fact that might be an indication of money laundering or financing of terrorism. However, for lawyers, a derogatory regime applies. The response upon request and the declaration on their own initiative are not to be made to the Public Prosecutor but to the chairman of the Bar who will then verify whether the circumstances are such that a response or declaration is compulsory pursuant to the law. Only then should the chairman of the Bar transmit the information to the Public Prosecutor.

IV DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

According to the 1991 Law, any communication between lawyer and client is confidential unless (1) they have agreed otherwise, (2) the communication is expressly qualified as non-confidential by its author and does not contain any divulgation or reference to a confidential element, (3) the communication cements an unconditional agreement between the parties, or (4) the communication is by its nature non-confidential. Communications between lawyers are also confidential, even to the client.

Lawyers in Luxembourg apply the Code of Conduct for European Lawyers provided by the Council of Bars and Law Societies of Europe ('the CCBE Code of Conduct') in their relations with foreign lawyer. The CCBE Code of Conduct provides that a lawyer wishing that a communication should be accepted by a colleague from another EU Member State on a confidential basis should ask in advance whether the letter can be accepted on that basis and express the confidential character clearly at the head of the communication or in a covering letter.

The 1991 Law also provides that in the case of search or seizure at a lawyer's office, the chairman of the Bar must be informed and has the right to be present and make observations during the search or the seizure.

The rules of privilege do not apply to in-house lawyers.

ii Production of documents

Pursuant to Article 58 of the CPC the burden of proof rests upon the party who invokes a legal or factual point to validate its claim or defence. The evidence submitted to the court needs to gain the entire conviction of the court. Evidence can take the form of written documents (whether official or private), affidavits or testimony. The judge can also order an expert's opinion but only if a point has not already been sufficiently verified, and the expert's report is never binding on the judge. The parties may also submit an expert's report but the court will always give more weight to reports that have been prepared by experts named by it or jointly by the parties. According to Article 279 of the CPC, any party that invokes a document in support of its arguments must communicate the document to the other party and to the court. The judge also has the power to order the parties to communicate documents that are not in their possession to each other. In this regard, the judge may order *ex officio* the production of such documents if they are considered relevant. Alternatively, the parties to the litigation may request the production of such documents; however, the judge is not obliged to follow the request of the parties. One may only request the production of a document from the person who is legitimately assumed to be in possession thereof. Furthermore, no 'class' of documents can be requested: the documents to be produced must be precisely identified.

V ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

There are various forms of alternative dispute resolution mechanisms available in Luxembourg. The main ones are arbitration, mediation and conciliation. Such mechanisms provides for faster and more friendly solutions to disputes.

ii Arbitration

Arbitration is defined as dispute resolution by one or more persons entrusted with resolving a dispute. The distinctive criterion of arbitration is the power given to these persons to make a binding decision.

Arbitration is governed by Articles 1224 to 1251 of the CPC, which apply without distinguishing between the commercial or civil, the domestic or international nature of a case except for matters listed in Article 1225 of the CPC where arbitration is prohibited (e.g., cases relating to a person's capacity or divorce). In addition, Luxembourg is a party to the European Convention on International Commercial Arbitration of 21 April 1961 and the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards ('the New York Convention'). Luxembourg has not ratified the European Convention providing a Uniform Law on Arbitration of 20 January 1966, but has introduced in substance the provisions of Articles 25 to 28 of the Uniform Law.

Where the parties have agreed to submit their dispute to arbitration, the ordinary courts lack jurisdiction to decide thereon, provided that the defendant raises the issue of lack of jurisdiction *in limine litis*. It does not, however, prevent the parties from seizing the summary judge.

An arbitration agreement is void if it does not specify the matters in dispute and the names of the arbitrators. Unless otherwise agreed by the parties, three arbitrators will be appointed as described at Article 1227 of the CPC; the procedural rules applicable to arbitration will be the normal rules applicable to court proceedings; and the arbitrators will have to render their arbitral award within a three-month period.

An arbitral award must be made enforceable by an enforcement order of the chairman of the district court in whose jurisdiction the award has been rendered. The CPC deals with the recognition and the enforcement of arbitral awards in general. Foreign arbitral awards will be rendered enforceable in the same way as domestic ones. The recognition and enforcement of an award can be refused only if (1) it falls under one of the causes for annulment as set out by article 1244(3) to (12) of the CPC, (2) the validity of the arbitral award can still be challenged before the arbitral tribunal and the tribunal has not ordered the provisional enforcement, or (3) the arbitral award or its enforcement would be contrary to public order or the matters in question should not have been dealt with by arbitration. Annulment of a foreign award in the home jurisdiction is not a ground to refuse enforcement in Luxembourg.

The New York Convention provides for a list of causes for the refusal of recognition and enforcement of an award, including *inter alia* (1) the invalidity of the arbitration agreement, (2) the award not yet having become binding on the parties, (3) the subject matter of the difference not being capable of being settled by arbitration under the law of the country in which recognition and enforcement is sought, and (4) the recognition

or enforcement of the award being contrary to the public policy of the country in which recognition and enforcement is sought.

Unless the parties have provided for an appeal instance, no rights of appeal are available against an arbitral award. The only possibility of challenging an arbitral award is the procedure to have it declared null and void by way of opposition to the enforcement order before the district court, the president of which has rendered the order. Article 1244 of the CPC draws up an exhaustive list of 12 bases for proceedings for annulment. Such procedure must be launched within one month of the date of the notification of the enforcement order or from the day of disclosure as to the causes of nullity relating to the grounds of the award, and is only possible for Luxembourg awards and not for foreign awards. In the case of a foreign arbitral award, it is possible to challenge the enforcement order before the Court of Appeal. The effect of these proceedings is not to annul the foreign arbitral award, but to prevent its enforcement in Luxembourg.

The enforcement of the arbitral award is stayed during the proceedings for annulment unless the arbitral tribunal has ordered the provisional enforcement of the award.

An arbitration centre exists at the Luxembourg Chamber of Commerce, governed by its rules on arbitration.

iii Mediation

Mediation as arbitration entrusts a third party with resolving a dispute but the role of the mediator is very different from that of arbitrator. The mediator has no power to make a binding decision on the parties. The role is limited to creating a dialogue between the parties.

There is no general legislation on mediation but specific rules provide for mediation in certain areas. For instance Article 24(5) of the Code of Criminal Procedure provides for the possibility for the Public Prosecutor, prior to its decision on the public action, to propose a mediation provided that this would (1) provide for the indemnification of the damages caused to the victim, (2) put an end to the trouble created by the violation of the law, or (3) contribute to the rehabilitation of the author. In its 2007/2008 annual report, the Public Prosecutor of Luxembourg reported that 142 cases were submitted to mediation.

Mediation is also very common in dealing with intrafamilial conflicts, such as those relating to the custody of the children in the case of divorce or parents refusing to provide financial support for the education of their children, etc.

The main mediation centres in Luxembourg are the following :

a the Centre de Médiation ASBL, which deals with intrafamilial conflicts, mediation initiated by the Public Prosecutor pursuant to Article 24(5) of the Code of Criminal Procedure and mediation in relation to private nuisance;

b the mediation centre created by the Luxembourg Bar Association, which deals with civil, commercial or social matters; and

c the Fondation Pro-Familia and the Espace Parole, which both carry out familial mediation.

According to the 2008 report of the Centre de Médiation ASBL, it had to deal with 206 cases in 2008. Only 110 cases ended up in mediation, mainly because of the refusal of one of the parties to submit the case to mediation. However, 100 of these cases were closed by an agreement between the parties.

In addition to the institutions mentioned, the Law of 22 August 2003 has created an Ombudsman in order to deal with claims from natural or legal persons against public administrations. A claim addressed to the Ombudsman does not affect the time limit for bringing proceedings. If the Ombudsman finds the claim grounded, he or she will issue a recommendation that will be transmitted the public administration concerned. If the public administration fails to carry out the recommendation of the Ombudsman, the recommendation may be published.

Several bills of law have been filed with the Parliament in order to introduce mediation in new areas, such as Bill of Law No. 5,155, which relates to divorces or Bill of Law 4,969, which proposes to introduce mediation in civil and commercial matters in the CPC.

iv Other forms of alternative dispute resolution

Conciliation has become an essential factor in collective labour relations. It has even been made compulsory by the legislator in certain situations. For instance, in the case of a 'collective dispute' (i.e., any dispute between an employer and a number of its employees) on working conditions or disputes arising in the course of negotiation of collective labour conventions, conciliation before the National Conciliation Office is compulsory before organising a strike or lock-up measures. Similarly, in the case of collective dismissal of employees, the law makes preliminary negotiations between the employer and the representative of the employees compulsory so as to at least address the possibility of avoiding or reducing the number of dismissals and to reduce their consequences, and, if possible, come to an agreement for establishing a social plan.

The parties always have the option to conclude a settlement agreement, even during the course of a trial. Settlements are always confidential.

VI OUTLOOK AND CONCLUSIONS

Most of the disputes arising in Luxembourg are still resolved in the courts; however, there is an increasing trend to have recourse to alternative dispute resolution mechanisms. In this regard, the legislator has introduced various bills of law in order to introduce and recognise various methods of alternative dispute resolution in the legislative arsenal. However, as these mechanisms are mainly based on the willingness of all the parties to participate, they also need to be recognised and accepted by society as efficient ways of resolving disputes for real progress to be made.

Appendix 1

ABOUT THE AUTHORS

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Léon Gloden became a member of the Luxembourg Bar in 1999 and joined Elvinger, Hoss & Prussen the same year. He became a partner in July 2007.

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