

Association For International Arbitration

# IN TOUCH



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January 2009



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## Mediation in psychological harassment disputes

In today's line of work, more and more people become victimised by both physical and psychological harassment, mostly caused by a dysfunctional organisation and an absence of communication on work-related aggravations, instantly creating an emotionally distressed and unhealthy work environment. Although these disputes are scarcely brought forward, attention should be paid to the possibility of introducing alternative dispute resolution to these types of party differences. At first glance, mediation offers an interesting tool for solving certain problems between employers and employees or just between employees without sacrificing the professional relationship between the parties. To understand and to analyse the suitability of mediation to these extremely sensitive matters, a short insight into the basic symptoms of harassment could prove to be helpful. The Conference on Mediation in Work-related, Moral Harassment Disputes of 21 November 2008, organised by Ms. Linda Bérubé and Ms. Hélène van den Steen, provided with an excellent overview of these delicate issues.



Inappropriate behaviour, which is offensive and repetitive of nature and is directed to one or more persons will be labelled harassment when the agent knows or should not have been unaware of the fact that his conduct brings forward negative, unwanted and hurtful consequences for the objects of the act. In exemplifying these types of nuisances, several humiliating, embarrassing and aggressive behaviour can constitute such inappropriate actions when someone's dignity and his or hers physical or psychological integrity is attacked.

The most common form of psychological harassment is mobbing, where at an horizontal authority level, co-workers blame one or several certain individual for every mishap that occurs inside a smaller work space. However, vertical harassment conducted in a top-down method where an authority figure inside a work area intimidates his or her subordinates, can have evenly deterring effects. For mediation purposes, the search for a negotiated balance between the parties, both victim as agent, is by far the most challenging in emotionally sensible cases



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like these. Where the victim is left hurt, humiliated and outraged, his counterpart will fear the risk of losing his or hers reputation most of all, next to the reduction of his level of self-esteem.

In response to the harassment actions, the victim has a wide range of possibilities to end his internal, but more importantly also his external dispute with the agent. Next to destructive and violent forms of dispute resolutions that would most likely only aggravate the parties differences, both parties are left with several, constructive options in dealing with their conflict, mediation being the most preferable as strict party-negotiation will unlikely lead to a high success rate because of the emotional burdens both parties suffer. It is plausible, however, that both parties will find their differences irreconcilable and are prepared to lose any future cooperation with one another in order to try their luck in front of a national court. Especially, the victim will be tempted to litigate as he or she feels that the nuisances already suffered are too damaging to even attempt a negotiation, supported by the fact that he or she will have a fair chance in persuading a judge by letting his co-workers testify and the presence of many jurisprudence on the matter. However, the slightly less formal approach of mediation benefits from the fact that its goal is to preserve a continuous relationship between the parties, provided that a minimum level of mutual respect and confidence is present. The reason why a victim will consent to mediate is his or hers desire to not over-retaliate the agent's behaviour and his or hers relentless motivation to solve a certain problem in order to receive internal closure on the matter. Furthermore, his intentions might be contaminated with fear of not being believed and fear of work sensitive countermeasures. For the agent, the motivations are somewhat different. He is after an understandable conversation allowing him to explain and put the actions in the right context, although he is also somewhat stressed by the fear of being found guilty by public trial and of being denied several future career opportunities.

Important in these types of mediations is the role of the third neutral member at the negotiation table, being the mediator. He will be put to the task to produce plausible solution options, focussing on balancing the interests of the parties on topics such as work evaluation, wage, workload, precise job descriptions and general employee-employer objectives, without losing eye on continuously enhancing mutual communication and maintaining a healthy work climate by mitigating between contravening forces based upon party tangible and personal work-related emotions, perceptions, values, beliefs and interests.

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[www.agire.ca](http://www.agire.ca)

### **Ohadac Latin America-China Forum of Legal Collaboration**

Within the prestigious framework of the Aula Magna of the University of Havana, the inaugural session of the Second Latin America-China Forum of Legal Collaboration took place under the support of OHADAC (Organisation for the Harmonisation of Business Law in Africa/ Organisation pour l'Harmonisation en Afrique du Droit des Affaires) and organised by the Faculty of Law of the University of Havana, the Popular Supreme court of the Republic of Cuba, the Ministry of Justice of the Republic of Cuba, the French-Latin American Lawyer Association Andrés Bello, the National Organization of Collective Lawyer Firm of the Republic of Cuba and the Cuban Court of International Commercial Arbitration.

From 3-6 December 2008, several distinguished speakers such as Professor Mei Xiaying, member of the Chinese Academic Council of Civil Law and Doctor Rodolfo Dávalos Fernández, main Professor of Private International law in the Fac-



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ulty of Law of the University of Havana, Chairman of the Cuban Court of Commercial International Arbitration took the floor on topics relating the legal regulation systems on contracts in America, after the welcoming word of Ms C. Arnel Medina Cuenca, president "the National Lawyer Union of Cuba".

Furthermore, Professor Shen Sibao, President of the Chinese Academy of International Business Law intervened on the topics of Orientation & Reforms of Commercial Arbitration in China. He was followed by Doctor Narciso Cobo Roura, Professor of the Faculty of Law of the University of Havana and Vice President of the Cuban Court of International Business Arbitration, who developed the topic of the intertwining relations between arbitral tribunals and Cuban national courts.



Doctor Francisco Victoria-Andreu, a recognized Mexican lawyer, subsequently made several considerations in connection with the international execution of annulled arbitral awards in the place of arbitration.

With this submerging initiative, Professor Dávalos emphasised the importance of bringing both arbitrations of China and Latin-American countries closer. He stressed out that we should all strive to create beneficial conditions to promote a multinational Caribbean & Latin American Arbitration culture, functioning openly and independently from national frameworks, composed of local arbitrators, and operating with fixed or rotating regional headquarters.

A future Conference on Caribbean & Latin American Arbitration could help to build such a federative project.

For more information and contact details, please visit the OHADAC website at [www.ohadac.com](http://www.ohadac.com)

### The Panukranian League of Arbitration

Over the years, both arbitration proceedings and arbitration organisations have developed considerably in the Ukraine. Today, more than 150 arbitration organisations are scattered all over the country. In order to increase the efficiency of these public organisations, the idea was brought forward to create a new professional and efficient organisation that could both ensure lobbyist activities in favor of arbitrators and judges and remain liberated from bureaucratic formalisms. In execution of those ambitions, the "Panukranian League of Arbitration", a new non-profit arbitration organisation, was registered at the Ministry of Justice in the Ukraine on the 9th July 2007.

Today, the Panukranian League of Arbitration represents and intensively defends the interests of arbitrators all over Ukraine. Besides promoting arbitration in everyday society and encouraging parties to appoint arbitrators instead of litigating their disputes, the League's main priorities lie in establishing a dialogue between representatives in the field of Ukrainian arbitration and state officials, such as state



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judges, and notaries, lawyers and real estate organisations. In particular, the Panukranian League of Arbitration actively seeks other legal organisations to cooperate with, such as the Ukrainian Ministry of Justice, the Law Association of the Ukraine, and the Association for European Affaires. Moreover, it offers an outstanding opportunity for arbitrators to participate in extensive training programs, organised on a regular basis. Additionally, the League embraces young talent in their quest of becoming an arbitrator by offering candidates for arbitration mandates tailor-made, professional courses.

To adhere to these tasks and with 16 regional branches already in place across the Ukraine, the League puts in large amounts of effort in putting Ukrainian arbitration on the map and raising public awareness in benefit of ADR. Next to publishing multiple arbitration-related articles in both popular and professional journals, the newest publicity stunt of the Panukranian League of Arbitration led to the recent debut of the TV-show "NB. Territory of Law" which was recently broadcasted on the national television network TRK.

Furthermore, the League, in cooperation with other arbitration organisations and law firms, regularly organises round-table reunions and conferences on vital topics of the legal practice of arbitral tribunals and their competences. Their latest conferences the League held, concerned "the Application of Legislation in the field of Real Estate Law and Legal Practice" and "Practical Questions in Organising Arbitral Tribunals in the Ukrain".

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### **ASEFUAN and AIA Collaboration**

The Association for International Arbitration is pleased to inform our members that we have reached a cooperation agreement with the Asia-Europe Foundation University Alumni Network (ASEFUAN). The intention of the collaboration is to promote mutual understanding between the people of Asia and Europe on an academic and professional level by promoting a meaningful intercultural dialogue between the two regions, particularly among the younger generation, based on the principle of mutual respect and equality. ASEFUAN was founded in Bali in April 2002 by the graduates of the ASEF University Programme, a project organized by the Asia-Europe Foundation (ASEF) which brings together some of the most outstanding undergraduates in Asia and Europe. Their members are typically university graduates in the fields of Social and Political Science, Economics, Law and Business.





### In next month's issue:

- The European Chamber of Arbitration
- **Report on ICC's Young Arbitrators Day**
- And much more...

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Published by:  
The Association for  
International Arbitration



### Upcoming events :

- 13 January 2009 : [Seminar on Investment Arbitration](#), organised by the Arbitration Centre of Mexico in Mexico
- 19 January 2009 : [ICC Day for Young Arbitrators](#) in Paris, France
- 23-25 January 2009 : [ASA/DIS Practice Building Seminar on International Arbitration](#) in Germany
- 30 January 2009: [International Commercial Arbitration: Fifty Years After the New York Convention](#), organised by OGEMID (Oil-Gas-Energy-Mining-Infrastructure Dispute Management) in Georgia, USA

### AIA welcomes the New Year...

Looking back at the last twelve months, the Association for International Arbitration would like to thank all our members for their loyalty and the amount of intellectual and narrative support together with aiding feed-back we received from many of our satisfied readers. We hope all of you will benefit from a prosperous 2009 and will keep honouring the goals of AIA in promoting alternative dispute resolution all across the world. Needless to say, the entire staff of our association wishes all our 28.000 readers in all continents a Merry Christmas and a Happy New Year.