

The establishment of new chambers for amicable settlement at the Brussels courts



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Over the last ten years, and certainly since the entry into force of the Act of 18 June 2018 laying down various provisions on civil law and provisions to promote alternative forms of dispute resolution, the role of the judge in promoting amicable forms of dispute resolution has been strengthened. Thus, the law provides that the judge must promote the use of amicable forms of dispute resolution at all stages of the procedure and that it is part of his mission to reconcile the parties.

Among the methods of settling disputes amicably are mediation and conciliation. In the case of mediation, the mediator is a third party who tries to get the conflicting parties to work out a solution. In the case of conciliation, the conciliator's role is more directive. He can himself propose a solution to the parties, or even make his opinion known to them if the dispute continues.

The latest development in this respect is that, since September 2020, the French-speaking Enterprise Court of Brussels (le "Tribunal de l'entreprise francophone de Bruxelles") and the Court of Appeal of Brussels have created a chamber for amicable settlement ("*chambre de règlement amiable*") within their jurisdiction, with the aim of offering litigants the possibility of trying to resolve their disputes out-of-court, under the supervision of judges trained in conciliation and/or mediation.

This initiative follows the example of other jurisdictions that had already set up such a system. One example is the chamber for settlement ("*schikkingskamer*") of the Dutch-speaking Enterprise Court of Brussels (de "Nederlandstalige Ondernemingsrechtbank Brussel")¹.

The objective is to offer the parties a negotiated solution that, according to the judges' discretion, would be "*more efficient, much faster and less costly*". The magistrate acts as a conciliator and, after hearing the parties, can propose solutions to them.

Proceedings before these chambers for amicable settlement are initiated on a voluntary basis and the proceedings are entirely free. Recourse to this conciliation attempt by the judges has no impact on the ordinary judicial proceedings in the event of failure.

The creation of these new chambers for amicable settlement stems from the observation that, despite the legislator's desire to give the courts and tribunals the possibility of reconciling the parties or promoting mediation, there is often not enough time in the introductory chambers ("*chambre d'introduction*") to do so and the pleading chambers ("*chambres de plaidoiries*") are overwhelmed.

The Court of Appeal of Brussels itself notes: "*The ordinary time limits for fixing a case before the Court of Appeal of Brussels remain very long despite all the efforts made by the court. This means that a case that is brought before the court can only be argued after several years of waiting.*"

As a result, many cases that have good chances of being resolved quickly through conciliation or mediation do not follow this way and are referred *de facto* to the ordinary judicial proceedings, inevitably leading to long and expensive conflicts.

As the tribunals and courts have observed, the objective of the legislator is therefore not met.

¹ Chamber 1bis of this court. Within the framework of various "pilot projects", chambers for amicable settlement have been set up at other courts in the country, including the Enterprise Court of Ghent, Ghent division and Bruges division in particular.

Conciliation

Conciliation is one of the tasks of judges. Article 731 of the Judicial Code provides that any request initiating proceedings may first be submitted for conciliation to the judge competent to hear the case in first instance, at the request of one of the parties or by mutual agreement. In addition, several judges are entrusted with specific or even compulsory conciliation tasks (in family matters and labour law in particular).

When acting as a conciliator, the judge remains impartial, neutral and independent. At the end of the conciliatory proceedings, he suggests or proposes a non-binding solution to the parties on the resolution of their dispute.

However, due to a lack of time and resources, conciliation by judges has so far proved to be quite rare in cases where its use is not mandatory. In practice, conciliation is often unsuitable since, once the parties have decided to refer their dispute to the judge, they want the judge to settle the dispute, giving right or wrong to one or other of the parties. In this context, the parties do not seek to be reconciled. The room for conciliation by the judge is therefore often limited.

Hearing in the chambers for amicable settlement

During the new conciliation hearings organized by the French-speaking Enterprise Court of Brussels and the Brussels Court of Appeal, the principle of adversarial proceedings or public hearings is not required. The exchanges that take place in this context are confidential and, if the parties agree, separate sessions with each of the parties may take place.

In view of the specific features of these new chambers, it has been provided that the conciliating judges will never be called upon to rule on the merits of the underlying dispute they have had to hear in the context of a conciliation that has not been successful.

The chambers for amicable settlement do not have a monopoly on conciliation, so that the other judges remain free to conciliate and promote mediation in the cases they have to hear, without, however, being able to benefit, in the case of conciliation, from the exceptions to the principles of adversarial proceedings and public hearings.

Now that these new chambers dedicated to the amicable settlement of disputes have been set up, there is every reason to believe that the ordinary chambers of the French-speaking Enterprise Court of Brussels and the Brussels Court of appeal will tend to refer the parties to the conciliation organized within these specialized chambers, rather than attempting to conciliate the parties themselves.

Mediation

Since the reform of 2018, the judge has the power, under certain conditions, to impose the use of mediation on the parties.

Unlike conciliation, the judge cannot be a mediator. It is therefore necessarily a third-party mediator who will be appointed to try to bring the parties to a mediation agreement. In practical terms, if a mediator is appointed, he will have to be paid by the parties, unlike in the case where it is the judge who leads a conciliation.

During the new conciliation hearings of the French-speaking Enterprise Court of Brussels it is foreseen that, in principle, the permanence of the accredited mediators would be held at the same time in the court building. The purpose of this permanence, which has been held on a regular basis for several years now, is to provide litigants and lawyers with information on the mediation process and, possibly, to make it easier and more straightforward to appoint a mediator.

Specifically

To register for a conciliation hearing, the procedure is deliberately very simple.

At the French-speaking Enterprise Court of Brussels a request for conciliation may be filed at the clerk's office by one party or by mutual agreement of all parties.

At the Brussels Court of Appeal, it is sufficient to apply to the court on the day the case is brought. A near date will then be communicated immediately.

At the Brussels Court of Appeal and the French-speaking Enterprise Court of Brussels, it is also possible to request a conciliation hearing during ordinary proceedings by simple letter or e-mail sent by the parties to the clerk's office.

On the day of the conciliation hearing, the parties must appear in person, assisted or not by their lawyer. In the case of a legal entity, the conciliation can only take place in the presence of a natural person authorized to represent this legal entity.

The French-speaking Enterprise Court of Brussels provides for a form to be filled in by the parties which must contain a brief summary of the dispute.

The hearing takes place without any formality, under the direction of the magistrate(s) and in the presence of the court's clerk. The judge hears the parties and the lawyers. All exchanges during conciliation hearings are confidential.

Where the request for conciliation has been introduced by means of a petition, the appearance in conciliation shall end with a report which records the terms of the agreement or the failure of the conciliation. The proceedings are then closed. No bailiff's fees, case preparation fees or listing fees are due.

In other cases, when the conciliation is successful, it may be recorded in a judgment or a ruling recording the agreement, which is enforceable. If the conciliation fails, the case may be referred back to the cause list or continued before the first instance judge. A timetable for the exchange of submissions may be set by the conciliation chamber.

In any event, in the future, the case may not be submitted to the same judge who has sat in a conciliation hearing of that case.

One more solution?

Whether in the context of a dispute between parties still in a business relationship or not (suppliers, debtors, creditors or others), and whether or not the dispute is already the subject of legal proceedings or not, the parties concerned wishing to find a quick and inexpensive solution could be attracted by the recourse to these new conciliating judges.

Parties involved in lengthy proceedings, where the time limits are far apart, could without great risk try their luck with these conciliating judges, because a possible failure to reach an amicable settlement would have no impact on the course of the proceedings and that the content of the exchanges in this context would remain confidential.

We note that, even if the French-speaking Enterprise Court of Brussels and the Brussels Court of appeal do not specify it, the new chambers for amicable settlement created within them are intended for parties whose dispute falls within their jurisdiction or competence.