

## MEDIATION IN MUNICIPALITIES IN SLOVAKIA AND SELECTED EU COUNTRIES

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**ABSTRACT:** *Practically everywhere around the world we encounter some form of conflict. The different views, needs, values (whether individuals or the whole society) are causing contradicts in different areas of our lives. Clearly, the conflict is a vital component of the society's life, and each of us was most likely a part of a larger or lesser conflict during his/her life. Conflict is a natural part of our lives which will push us further. Sociology is the study of social relationships, social interaction and culture of everyday life and one of the basic principles says that a constant conflict is vital for society where in the end new balance in the life is found. Mediation is an effective tool for dealing with these conflicts which is mostly used in resolving litigation, but there are other areas of use for mediation, which will be further explained in this document. Although mediation has been placed in our legal relatively recently, it has a rich history and firm place in the life of society. The new history of mediation goes back to the eighteenth century, when this was used as a tool to prevent expensive and time-consuming litigations. The institutionalized form of mediation was introduced for the first time at the beginning of the last century in the United States. Although directive 2008/52/EC of the European Parliament and Council from 21 May 2008 on certain aspects of mediation in civil and commercial matters should ensure a certain unity of national arrangements it is clear, that individual countries have different approach to legislative matters. I believe that it will be interesting to compare our legislation with the other countries but given the scope of the article I will focus only on the few selected states.*

**KEY WORDS:** *mediation, mediation in world, comparison*

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## **INTRODUCTION**

Mediation is at different stages of development in EU countries. In some countries, there are complex legislative rules and processes regarding mediation. In other countries, Government have shown little interest in regulating mediation. However, there are EU countries with a solid culture of mediation, relying on self-regulation.

More and more disputes are presented to the courts. As a result, this means not only the longer wait to resolve the dispute, but also raises the legal costs to the level that those can often be more expensive than the value of the dispute. Mediation is in most cases faster and therefore usually cheaper than ordinary legal proceedings. This is particularly true in countries where the judicial system is overloaded and the average court proceedings take several years. There is therefore an increasing interest in this way of resolving disputes as an alternative to judicial decisions, despite differences in areas and ways of mediation across the European Union. (E-Justice, 2019a). In the next part of the article I will focus on mediation aspects in selected EU countries, namely, Slovakia, Germany and France.

## **DIVISION INTO PARAGRAPHS**

### **Slovakia**

The Mediation Act (Act 420/2004 Z. Z.) regulates the use of mediation, its principles and further defines its structure and legal effects. The law was amended several times, the most significant amendment came in the year 2010 in the context of the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21. May 2008 on certain aspects of mediation in civil and commercial matters.

Mediation is based on the principle of volunteering, where subject is dispute arising from civil law, employment law, commercial law, contract law and family law relationships. (Molitoris, 2016)

In Slovakia, based on Act mentioned above, mediation is interpreted as a non-judicial settlement of disputes that arose from contractual or other legal relationship, in which both parties work on resolution with mediator. Mediation itself is treated by the law as a business activity with a strict requirement

for the qualification of the mediator itself. Mediator may be only person that is registered in the list of mediators.

As for the education of the mediator, the legal requirement is that the mediator is a person with a higher education, a good person, and must also have professional training for the mediator. Mediation course is looking at other aspects such as ethics in addition to teaching legal aspects related to mediation.

Duration of the basic course is set for 200 hours. What I find very beneficial is the legal obligation of ongoing professional education to the extent of one vocational seminar per year. (Law 420/2004 Coll.)

In addition to the above, it is also necessary for the mediator to carry out his activities independently, consistently, impracticable and with due professional care, while respecting the effectiveness of the mediation exercise. Furthermore, everything that has been learned during mediation process is strictly confidential. (E-Justice, 2019)

Another important fact is that the mediator is fully responsible for any damage that mediation might cause. Mediation is initiated once the mediation agreement is signed by all interested parties. The agreement is then deposited in the Central register of documents. As a result of this submission, limitation and prescription periods cease to run. (Doležalová, 2014)

An interesting financial motivation for all involved parties is the possibility of repayment of 90% of the paid court fee in cases where their dispute has ended by approving a court settlement before the start of the trial itself. In the event of an amicable settlement during a court hearing, 50% of the court fee will be returned to them. If the administrative Court stops the procedure of administrative action in order to satisfy the applicant, the applicant shall be reimbursed 75% of all fees paid. In the case of unpaid fees in the same range, the court will not withdraw the fee and the obligation to pay the fee will be terminated. (Act no 71/1992 ECR, § 11 (7))

Mediation on the territory of Slovakia is an informal, voluntary and confidential procedure for out-of-court dispute resolution through the services of a mediator. The aim of mediation is to reach an agreement that is acceptable for both parties. The agreement reached during mediation process must be documented in writing. This agreement signed by both parties is binding. Under this agreement, the entitled party have the right to seek enforcement of law or distraint of debtor if this agreement is:

- Drafted in the form of a notarial deed,
- Approved as conciliation on the court or by the arbitration body. (E-Justice, 2019b)

In this context it is necessary to add that there is a limitation for mediation in the administrative procedure in the cases where the municipality body carries out the role of the administrative authority as well. That restriction arises in relation to the nature of the case, which is determined by the subject-matter, number of participants or their interests. (Molitoris 2016)

From administrative proceedings perspective, mediation may be applied mostly in proceedings which arise from the civil relationship of the parties. Mediation is advisable to use in cases related to compensation for damages, in building, territorial and expropriation proceedings and to the greatest extent in proceedings concerning the settlement of neighborhood disputes under § 5 of the Civil Code.

In the case of neighborhood disputes, the municipality will invite all parties to an oral hearing. They will be advised to conclude conciliation under section 48 of the administrative procedure. Conciliation is considered as elementary and key settlement of the dispute if any of the neighbors ask the municipality to protect his/her rights. It is important to add that it is not possible to appeal against an approved settlement (Spišiaková 2017).

More difficult is the use of mediation in conflicts that are not under civil law. These include, for example, tax, social affairs, or questions about school administration. Mediation will surely find use in those type of situations as well. (Molitoris, 2016)

If mediation does not lead to the conclusion of an agreement, it is possible to claim the rights in question in court.

## **Germany**

The basic source of law in Germany is the Mediation Act, effective from 26. 7.2012. The German legislature was issued the same way as the Slovak (Act No 420/2004 of paragraph 1 (2)) and the law governs not only cross-border but also domestic disputes. (Gesetzes zur Förderung der Mediation und anderer Verfahren der außergerichtlichen conflict beillegally Ung vom 21. Juli 2012, BGBl. § 1).

Contrary to the European directive, the German legislature does not distinguish between cross-border trade and civil disputes (on the one hand) and public law disputes (on the other hand). (Vučetić, 2016)

With this law has mediation in Germany been legally regulated for the first time. This law is also executing the European directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. The Mediation Act goes beyond the requirements of this European directive. The directive applies only to cross-border disputes in civil and commercial matters. However, the Mediation Act applies to all types of mediation carried out in Germany, regardless to the nature of the dispute and the residence. (E-Justice, 2019c)

The German Mediation Act only sets basic rules. Mediators and parties must be provided with equal opportunities when carrying out mediation. The law first defines the terms "mediation" and "mediator" to distinguish mediation from other dispute resolution procedures. According to this definition, mediation is a structured procedure whereby the parties, using one or several mediators voluntarily and on their own responsibility seek to settle the dispute by agreement. Mediators are independent and neutral persons without decision-making powers that are assisting involved parties during the mediation. No detailed procedure was laid down for the implementation of mediation. However, different obligations are laid down concerning publicity and various restrictions on activity in order to ensure the independence and neutrality of mediators. In addition, the law explicitly regulates the obligation to maintain confidentiality for both mediators and their helpers. (E-Justice, 2019c)

This law creates various incentives in the various negotiating orders (e.g. in the Code of Civil Procedure) to support the settlement of disputes by agreement. In the future, the parties must prove whether they have attempted a non-judicial settlement of the dispute, for example by mediation and whether they believe that there are any issues with non-judicial settlement. In addition, the Court may propose to the involved party's mediation or other alternative dispute resolution procedure and if the parties accept this proposal, the suspension of the proceedings will be ordered. The contribution to the costs of mediation is not currently planned. (E-Justice, 2019c)

The federal government has a duty of five years after the introduction of this law to submit a report on its effect to the Federal society. It is also necessary to

verify if any further legislative measures are needed for education and training of mediators.

This law has also adjusted rules of the mediation process, conflict of interest of the mediator, secrecy and the requirements imposed on the training of mediators. It is interesting that in Germany the legal adjustment does not distinguish the suitability or inadequacy of individual disputes for the mediation process. In general, mediation applies to all types of disputes, where only the exception is mediation implemented by judges-counselors. (Doležalová, 2014)

Access to the mediator's profession is not limited in any way. It is responsibility of mediators to ensure that required knowledge and experience of mediator is enough. The Mediation Act provides only claims for knowledge, competence and appropriate methods of education. Even higher education is not required. However, the Federal Ministry of Justice has the authority to establish supplementary requirements for the education and training of mediators through the decree. A successful graduate of such education is called a certified mediator. To complement, the training of mediators is conducted by various associations, universities, businesses or individuals. (E-Justice, 2019c)

As in the Slovak Republic, mediation in Germany is based on the principle of volunteering. According to the Mediation Act, it is not possible to order mediation by a court or by law. It is also interesting that the enforceability of mediation agreements is not automatic. However, the enforceability may be achieved in several ways, for example by approval from notary, by an enforceable arbitration award or by final agreement between the legal representatives from both parties with the subsequent imposition at the competent regional court. (Doležalová, 2014)

The mediation is applicable whenever a judicial path is not required for the settlement. Mediation is most often used in areas of family law, inheritance law and commercial law. (E-Justice, 2019c)

The German legal system has developed various informal procedures conducted by the administrative authorities in order to avoid unnecessary actions before the administrative courts. The administrative authorities may therefore invite the parties concerned to take advantage of the right for petition to initiate the informal communication process for contested decision. The administrative authorities were in many cases able to explain the case to the parties and to avoid ambiguity and correct dispute (Dragos, NEAMTU, 2014).

## **France**

The body that would be responsible for regulating the performance of mediators does not yet exist in France. However, for example, in family disputes, there are various non-governmental organizations such as the Association Pour la Médiation Familiale or the National Federation of Family Mediation Associations (Fédération Nationale des Associations de Médiation Familiales) that can be reached out to.

In general, mediation can be used in all areas of law, but needs to follow the public policy governing rules. Mediation would not be possible, for example, in matters of mandatory marriage or divorce rules. The most significant use of mediation is found in matters of family disputes and in disputes of minor magnitude. (E-Justice, 2019d)

Following extensive debates by public authorities, lawyers and courts in 2011, the French Government adopted the law (Ordonnance No. 2011-1540) for the national implementation of the provisions of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

The main objective of the new legislation on voluntary mediation was the pursuit of its possible use in civil and commercial disputes within France and cross-border disputes. The setting of common rules has simplified overall use of mediation, allowing mediation to be applied in the cases of industrial and administrative disputes. (Doležalová, 2014)

France is very strict when it comes to secrecy. If the parties involved in dispute do not agree otherwise, the mediation process is entirely confidential. Therefore, confidentiality is not only applicable to the mediator or other persons involved in the mediation, but to the whole process of mediation. Following the adoption of the law of 2011, agreements concluded within the framework of mediation are considered as entirely effective. It doesn't matter whether this is a judicial or voluntary mediation. However, the approval from the judge is needed for execution (E-Justice, 2019d.)

The French legislation does not impose any specific requirements on the education of mediators. Only exception is mediation in family matters. Diploma of family mediator than can be obtained from accredited facilities is required for mediator. The diploma is issued by a regional office, which confirms the education or passing of certification tests. Accreditation

for Education Centre is awarded by the Regional Directorate for Health and Social Affairs. Training courses are organized in length of 560 hours spread over three years, where at least 70 hours are required for practice. (E-Justice, 2019d)

In the field of public administration, there is a process where two or more parties seek an agreement on a friendly settlement of the dispute with the assistance of a mediator who is independent and has been chosen by the Court itself.

There are two ways of mediation in the field of public administration- conventional and judicial mediation. For conventional mediation we recognize three cases- based on a contractual mediation clause for dispute, once both sides reach an agreement to settle dispute and the transfer of the case to the judge. Judicial mediation takes place after the order from judge of the Administrative Court. He has the possibility to order mediation (in case of obtaining the consent of the parties). These include cases such as a dispute between a public figure and an employee or an dispute over a land use plan. There are several positives of this mediation. The most important positive is that the concerned parties can resolve the dispute by mutual agreement. Another positive is that resolution of the dispute is reached swiftly. Mediation is also known for confidentiality that applies to all parties. The mediation intermediary adheres to the National Code of Ethics of the French Federation of intermediate centers. Another positive is the fact that the costs for the mediation can be predicted and the parties can have the opportunity to negotiate agreements that have the prospect of mutual profits (Baudot 2011).

## **CONCLUSIONS**

There are many possible areas where mediation can be used. Mediation can be an appropriate solution for family disputes (Lachytová 2010), labor disputes, civil disputes or commercial disputes, but it also has a section on public administration. Mediation can be seen most often in the form of amicable settlement of the dispute which has already been reached in the trial phase.

At the government level, we can define disputes that are most often addressed by mediation:

- Neighbor disputes-land surveying and land borders, breeding of pets, noise problems, etc.,



- Civil disputes – disputes arising from deed of gift, contract of sale or misunderstandings in inheritance proceedings,
- Family disputes – family split up, the solution of non-share ownership, etc.

In the self-administration, mediation is an appropriate and effective in labor disputes, both between employees in an equivalent position and in vertical position, i.e. in a position between supervisor and subordinate, but can also be used in disputes over the competences of municipal authorities, disputes between municipal authorities and service suppliers or in discriminatory disputes.

One of the positive aspects of mediation in the self-government is a better throughput of the intentions in municipalities and cities with regards to the public opinion, process acceleration and the cheaper processes, and last, but not least, better workplace relationships.

However, prerequisite for the successful mediation process is willingness of both parties to resolve their dispute in this way and trust in the mediation procedure itself and its effectiveness.

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