

PROBLEMATIC ASPECTS OF MANDATORY MEDIATION IN LITHUANIA

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Abstract

Relevance of the topic. In Lithuania from 1 January 2020, there is compulsory mediation in family disputes, which are dealt with in accordance with the Code of Civil Procedure. The parties to the dispute or one party to the dispute must initiate the process of compulsory mediation before applying for a family dispute resolution. Mandatory mediation – this is the procedure of dispute resolution outside the court. The parties who have not used compulsory mediation lose the right to settle a family dispute in court. Mediation can only be applied in civil family disputes that allow the parties to the dispute to enter into a settlement. The question is, in what disputes are the mandatory mediation applies? Mediation can be applied in family disputes, such as divorce, division of property, maintenance of minors, communication with them, and determination of children's place of residence, determination of paternity. In Lithuania, this mandatory mediation institute has been applied in family disputes for almost three years, so it can be stated that a lot of practice and information can be explored the topic of compulsory mediation. This writing work will address and analyze the problematic aspects of the application of mediation.

The main problems. Firstly, after the entry into force of the amendments to the mediation of the Republic of Lithuania, this law was criticized because mediation was applied in all family disputes without exception. Therefore, in 2021 as of 22 April 2004, the legislature adopted a decision on the amendment of Articles 20 and 21 of the Law on Mediation of the Republic of Lithuania. The second problem of application of mandatory mediation is the time for which the state pays for up to 4 hours, so the question arises if it is possible to resolve the family dispute in such a short period of time when such disputes are resolved in months. The third problem of applying mediation is the qualification improvement of the mediators.

The tasks. 1. To define the concept of mediation and mandatory mediation. 2. To reveal the practice of compulsory mediation in Lithuania. 3. Analyze the problematic aspects of the mandatory mediation procedure in family disputes.

The aim of the work is to investigate problematic aspects of the application of mandatory mediation in family disputes. Since mandatory mediation in family disputes has been applied only since 2020, it is very important to analyze and investigate all the problems, which the mediation institute has a lot of.

As the result – after analyzing the term of mandatory mediation and its principles, despite the fact that mandatory mediation has certain application problems, it was concluded that the mediation institute in Lithuania is improving every year. Mediation is an excellent method of dispute resolution during which the disputing parties can reach a solution that satisfies them. **The used methodology** involves analysis of scientific literature, analyzes legislation and case law related to the application of mandatory mediation. The generalization method is applied.

Keywords: mediation, mandatory mediation, mediation problem aspects, family dispute

Introduction

Statement of the problem

When examining the problems of mandatory mediation, it is important to mention the problems of this procedure. The first, after the entry into force of the amendments to the mediation of the Republic of Lithuania, this law was criticized because mediation was applied in all family disputes without exception. Therefore, 2021 As of 22 April 2004, the legislature adopted a decision on the amendment of Articles 20 and 21 of the Law on Mediation of the Republic of Lithuania. The second problem of application of mandatory mediation is the time for which the state pays for up to 4 hours, so the question arises as possible to resolve the family dispute in such a short period of time when such disputes are resolved in months. The third problem of applying mediation is the qualification improvement of the mediators.

Relevance of the topic mandatory mediation is a new institute in Lithuania, although the word mediation itself has been known in Lithuania since. Mandatory mediation is a great alternative to dispute resolution, which gives the parties to the dispute the opportunity to find a solution that satisfies both sides. In

Lithuania, family disputes mandatory mediation has been applied since 2020 January 1. Mandatory mediation in 2020 In family disputes, it was a new and many questions that raise many questions.

The aim of this work: analyze problematic aspects of the application of mandatory mediation in family disputes.

The concept of mediation

The term mediation is known as a way of resolving disputes. In some states, mediation is known as target mediation. Mediation is one of the disputes to resolve the dispute, it is important to determine what disputes can be applied to mediation in order to use this dispute resolution procedure. Mediation is one of the most popular methods of alternative dispute resolution, common in various jurisdictions and international disputes. It should be noted that in Lithuania, mediation is used to resolve civil and non-administrative disputes. Law of the Republic of Lithuania on Conciliation of Civil Disputes No. X-1702 Amendment Act applies specifically to non-judicial and judicial mediation.

Mediation is an interest-oriented method of conflict resolution, during which an impartial and neutral third party encourages and helps conflicting parties to reach satisfactory and acceptable solutions for both parties to the dispute. The main goal of mediation is a peaceful resolution of the dispute. After successfully resolving the dispute during mediation, a settlement agreement is usually concluded, which is then submitted to the court for approval. The Mediation Law specifies that after the disputing parties reach a peaceful resolution of the dispute, a settlement agreement is concluded, which has the force of law for the disputing parties, and the concluded settlement agreement also prevents future disputes. It is important to emphasize that the requirements of the Civil Code of the Republic of Lithuania and other laws are applied to peace agreements concluded during mediation. It is important that the settlement agreement concluded during mediation must be in written form, otherwise this agreement will be considered invalid.

If the disputing parties manage to settle the dispute amicably, the mediation is concluded with a settlement agreement. The disputing parties confirm this agreement with their signatures, that they are familiar with the terms of the agreement and agree with them, and by signing the agreement, the disputing parties undertake to comply with the terms of the agreement. The parties to the dispute must submit the signed settlement agreement to the court, i.e. request for approval of the peace agreement. Such a request can be submitted to the district court of the place of residence of one of the disputing parties. In this case, the approved settlement becomes *res judicata* and can be enforced.

It is important to note that there are different mediation models that can be applied in different spheres of legal relations. In addition, there are different types of mediation. One of them is precisely mandatory mediation, which we will discuss in this paper.

Mandatory mediation in Lithuania

The term mediation is now well-known not only in Lithuania, but all over the world as a method of dispute resolution. In some states, mediation is known as conciliation. The European Union actively encourages the resolution of disputes by alternative means of resolution, such as mediation. In order to reveal the concept of mandatory mediation, it is important to mention the mediation institute itself and how it was started to be applied in Lithuania. Mediation has been known in Lithuania since 2005, when the rules of mediation were approved by the resolution of the Council of Judges. According to these rules, judges who were mediators conducted judicial mediation. In 2008, the Mediation Law was adopted, which established the mediation conditions and provisions that were applied to judicial and extrajudicial mediation of civil disputes. In addition, when it comes to mediation, it is important to note that this term is of Lithuanian origin, while the term mediation is international, which comes from the English word *mediation* (Kaminskienė, N., 2013). Since 2015, mediation has been widely used in all courts, and since 2019, a new version of the Law on Mediation came into force, which established the main conditions for mediation in civil disputes, as well as requirements for persons wishing to provide mediation services were determined in this version. Therefore, starting from 2019, mediation services could only be provided by those persons who were included in the list of mediators of the Republic of Lithuania compiled and managed by the State Guaranteed Legal Assistance Service (hereinafter – VGTP) (Law on Mediation of the Republic of Lithuania, 2008). The Mediation Law provides the concept of the term mediation, mediation is a civil dispute resolution procedure, during which one or even several impartial mediators help the disputing parties to resolve the dispute peacefully (LR Mediation Law, 2008). The aforementioned law clarifies the concept of mandatory mediation and also clarifies what constitutes a civil dispute. Mandatory mediation is mediation which, in cases established by law, must be used before going to

court for a civil dispute resolution. A civil dispute is a dispute that is or can be considered in a civil procedure in a court of general competence (LR Mediation Law, 2008). In 2020 on January 1, mandatory mediation began to be applied in all family disputes, and in 2021 the legislator adopted amendments to the Law on Mediation, which aim to limit the possibility of applying mandatory mediation in family disputes in which there is a person who wants to go to court due to domestic violence. The application of mandatory mediation is intended for the dispute between the parties to be resolved peacefully during mediation, but it is important to understand that mandatory mediation is not a process that seeks to reconcile the abuser with the person who has experienced violence. In case of violence, if the disputing parties wish to resolve the dispute with the help of mediation, the mediator should offer to use shooting mediation, which means that the disputing parties have the opportunity not to meet during the mediation. That is why the amendment to the mediation law was adopted. Therefore, it can be stated that mediation is not mandatory when a person who has experienced violence in the family or a close environment wants to resolve the dispute, which means that such a person will not be required to apply for the initiation of the mandatory mediation procedure. Thus, the legislator limited the application of mandatory mediation in this way. In addition, it is important to note that a person who may have experienced domestic violence has the right to voluntarily apply for mandatory mediation and receive funded mediation services. Article 20 of the Law on Mediation indicates that mandatory mediation is applied in family disputes, except in cases where a person who has experienced domestic violence seeks to apply to court, and the other party to the dispute is possibly the abuser. Also, the amendment to Article 21 of the aforementioned law indicates that upon receipt of a request, the VGTP or the mediator selected by the party to the dispute must send a notice to the other party to the dispute and inform them of the received request and indicate that no later than within 3 working days from the date of receipt of the request fourteen days from the date of sending this notice, the consent or disagreement of the other party to the dispute must be received regarding the conduct of the mediation. It is important to emphasize that when the other party to the dispute does not submit consent to mediation within the deadline set by law, it is considered that the other party to the dispute has not agreed to the mandatory mediation. Therefore, the disputing party who has initiated the mediation process has the right to apply to the court for the resolution of the dispute, because it is considered that the disputing party has implemented the requirement established by law to use the mandatory mediation procedure.

Problematic aspects of the application of mandatory mediation

Mandatory mediation is applied in solving family disputes, which are examined by the law of the dispute in accordance with the procedure established by the Code of Civil Procedure of the Republic of Lithuania (hereinafter referred to as the Civil Procedure Code of the Republic of Lithuania) and in other cases established by law (Law on Mediation of the Republic of Lithuania..., 2008). Foreign literature states that the court is not the only way to resolve any family dispute. There is another way to resolve the dispute, which is mediation, which is mandatory before filing a lawsuit, and if the parties to the dispute have not used this procedure before going to court, then the courts encourage the parties to try to resolve the dispute amicably.

Court practice shows that from 2020 January 1 persons seeking to apply to the court did not know about the mandatory mediation institute. The decision of the Jurbarkas Chamber of the Marijampolė District Court refused to accept a lawsuit for divorce due to mutual fault. The court argued that the plaintiff did not comply with the procedure for preliminary settlement of disputes out of court established for this category of cases, therefore the plaintiff's claim is refused (Jurbarka Chamber of the Marijampole District Court 2020-01-07 ruling in civil case No. 2-755-523/2020). Therefore, from 2020 January 1 if a dispute has arisen between the spouses regarding divorce, division of property, the spouses must try to resolve the dispute through this alternative method of dispute resolution before applying to the court. In addition, if there is a dispute between parents living separately regarding the amount of maintenance for a minor child, the order of communication, or even the determination of the place of residence, the child's parents must also resolve this dispute through mandatory mediation before going to court. It should be noted that in Lithuania, the mandatory mediation procedure is only possible for such disputes, for which a settlement agreement is allowed by law. The concluded settlement agreement has the force of law for the disputing parties (Law on Mediation of the Republic of Lithuania..., 2008). It can be noticed that mediation process is often requested when resolving a dispute regarding paternity dispute, limitation of parental authority, but this can only be resolved by judicial procedure, because a peace agreement cannot be concluded due to such a dispute, which means that the mandatory mediation procedure for such dispute also does not apply.

Although this alternative dispute resolution method has many positive aspects, for example, it is a voluntary, confidential, faster process than litigating in court, it is also a process that improves relationships and helps preserve better relationships in the future. Also, the mediation process can be completely free of

charge, only if a person applies to VGTPT for conducting mediation. A lot of positive aspects can be listed about the mediation process, but it is very important to delve into the problematic aspects of the application of mediation.

As already mentioned, mediation is a free process. The question is, where should a person apply and what should they submit if they want to receive such a free procedure? In order to receive compulsory mediation services, a party to a dispute or both parties to a dispute must: submit an application (can be joint) to VGTPT for the appointment of a mediator or submit a request (can be joint) to a mediator of their choice, entered in the list of mediators of the Republic of Lithuania, to carry out compulsory mediation (when the mediator is appointed not VGTPT, the state does not finance mandatory mediation services). The decision on mandatory mediation services and the appointment of a mediator to provide these services is made by the VGTPT or the mediator who was approached for mediation, after receiving the consent of the other party to the dispute to participate in the mediation (Mediator's Guide..., 2019). It is important to pay attention to the fact that when applying to VGTPT for the appointment of a mediator in resolving family disputes, the state only pays for up to 4 hours of the mediation process. So, the question is, is it possible to resolve the dispute in such a short time? Based on the results of the activities of the Lithuanian Courts, civil cases in 2021 were processed in an average of 102 days. In the UK, family disputes that are resolved through mediation take an average of 110 days, while family disputes that are resolved in court take around 435 days. However, the Mediation Law provides that after using up the mediation time paid for by the state, the parties can continue the mediation process by paying with their own funds.

VGTPT also pays with state funds for the preparation of mediators for the mediation process and for formalizing the mediation results, which can take up to one hour (LR Mediation Law..., 2008). As practice shows, one hour is never enough to formalize the results of mediation (for example, to prepare a peace agreement). No legal acts stipulate that mediators must prepare a settlement agreement for the parties to the dispute, but in practice we see that mediators prepare settlement agreements for the parties. It is said that drafting a settlement agreement even in simple disputes takes more than an hour, so mediators are usually forced by the parties to refuse to draft such a document, or donate their time and work for free.

It is also important to mention the payment of mediation services to mediators, currently mediators are paid 20 euros 114oro ne hour of mediation⁶ (before taxes), although the price is significantly higher when contacting a mediator privately. One article states that over time mediators will have considerable experience in providing mediation services and will not provide mediation services through VGTPT. The article also mentions that mandatory mediation services are partially financed from the funds of the European Union, so the mediators are wondering whether the state of Lithuania will be able to ensure the payment of mediation services to the mediators when the funding from the European Union ends.

The actual practice of family dispute resolution mediation is recognized to be intellectually, emotionally and imaginatively challenging and creative. Any dispute is an emotionally unpleasant process. People who apply for mediation often wonder if the mediator who will be appointed in their family case will have a certain education or will be able to help resolve the family dispute peacefully. The methodological publication "Mediator's Guide" discusses the needs of a mediator's special knowledge and qualities when providing mediation services to parties. It is indicated that family mediation requires special knowledge and abilities from the mediator. The mediator's knowledge and skills are related not only to mediation, but also to family therapy, family services, knowledge of the support mechanism and psychology. Most often, mediation is used to resolve a divorce dispute. Such family conflicts are characterized by mistrust of the parties, dishonesty, desire to hide information, hostility, different interests and power imbalance. Therefore, when choosing a mediator to resolve a family dispute, the qualifications of the mediator should be taken into account, because this is very important, since the parties come to the mandatory mediation process out of duty and the mediator's professionalism will depend on what result will be achieved in this mediation and what opinion will be formed about this process in society. It is noticeable that in the list of mediators of the Republic of Lithuania prepared by VGTPT, the mediator's professional qualification is doctor. So, the question arises, will the mediator, who is a doctor, be able to help the disputing parties reach a peaceful agreement, or will he be able to help resolve the conflict regarding the division of property or the maintenance of minor children? Perhaps in such cases, the parties should choose several mediators for the mediation process, but the parties to the dispute should pay for the services of other mediators at their own expense. The Law on Mediation of the Republic of Lithuania stipulates that only mediation services provided by one mediator are paid from the state budget funds.

Conclusions

After analyzing the term of mandatory mediation and its principles, it can be concluded that mandatory mediation has been applied in family disputes since 2020. On January 1, so it is mandatory to use this procedure before applying to the court for a dispute resolution. Mandatory mediation is characterized by the principle of voluntariness, so it is very important to ensure that the parties to the dispute voluntarily participate in the mediation process. In conclusion, it can be said that mediation is an excellent alternative to dispute resolution.

The introduction of mandatory mediation and its application in civil family disputes is a consistent and deliberate process. In order to ensure the quality of mediation services, qualification requirements for mediators have been established, institutions responsible for managing mediation have been allocated, the legal regulation of mediation has been detailed, and the procedure for initiating mandatory mediation has been established. In addition, the parties to the dispute have the right to choose their participation in the mediation process, its course and execution procedure, and the possibilities of agreement.

Practice shows that still a large number of family disputes that are subject to mandatory mediation do not reach mediators, because after one of the parties to the dispute initiates the mandatory mediation process, the other party to the dispute has the right not to respond to the offer of mediation or even to refuse it, which does not cause any negative consequences. In light of this, more than 50% of family disputes are still settled in court.

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Probleminiai privalomojo tarpininkavimo Lietuvoje aspektai

Lietuvoje nuo 2020 m. sausio 1 d. įsigaliojo privalomas tarpininkavimas šeimos ginčiuose, kurie nagrinėjami Civilinio proceso kodekso nustatyta tvarka. Ginčo šalys arba viena iš ginčo šalių privalo inicijuoti privalomojo tarpininkavimo procesą prieš kreipiantis dėl šeimos ginčo sprendimo. Privalomasis taikinamasis tarpininkavimas – tai ginčo sprendimo ne teisme procedūra. Šalys, nepasinaudojusios privalomuoju taikinamuoju tarpininkavimu, netenka teisės šeimos ginčą spręsti teisme. Taikinamasis tarpininkavimas gali būti taikomas tik civiliniuose šeimos ginčiuose, kuriuose ginčo šalys gali sudaryti taikos sutartį. Kyla klausimas, kokiuose ginčiuose taikomas privalomas tarpininkavimas? Tarpininkavimas gali būti taikomas šeimos ginčiuose, pavyzdžiui, dėl santuokos nutraukimo, turto padalijimo, nepilnamečių vaikų išlaikymo, bendravimo su jais ir vaikų gyvenamosios vietos nustatymo, tėvystės nustatymo. Lietuvoje šis privalomosios mediacijos institutas šeimos ginčiuose taikomas jau beveik trejus metus, todėl galima teigti, kad privalomosios mediacijos temą galima išnagrinėti, sukaupti nemažai praktikos ir informacijos.

Šiame rašto darbe nagrinėjami ir analizuojami probleminiai mediacijos taikymo aspektai.

Reikšminiai žodžiai: tarpininkavimas, privalomasis tarpininkavimas, tarpininkavimo probleminiai aspektai, šeimos ginčas