



REPUBLIC OF SERBIA

Ministry of Justice

LAW ON MEDIATION

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ZAKON O POSREDOVANJU - MEDIJACIJI

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LAW ON MEDIATION

I. GENERAL PROVISIONS

Scope of Application

Article 1

This law shall regulate the rules of mediation procedures (hereinafter: mediation) in disputes and in particular: property - legal relations between physical persons and legal entities; commercial and family; labour and other civil law relations, administrative and criminal procedures, in which the parties act freely, unless the law stipulates exclusive authority of a court or other relevant authority.

The provisions of this Law shall apply notwithstanding whether mediation is executed prior or after opening the procedure for the settlement of disputes, with or without the instruction of the court or other body.

The provisions of this Law shall not apply to employment contract termination and minimum wage disbursement disputes.

Concept of Mediation

Article 2

Mediation is any procedure, notwithstanding its name, whereby the parties wish to settle their dispute through one or more mediators assisting the parties to reach an agreement.

Mediators shall not be authorized to impose a binding agreement on the parties.

II. PRINCIPLES OF PROCEDURE

Voluntary Basis

Article 3

Mediation is always carried out on the basis of the explicit agreement between the parties.

Equal and Impartial Treatment of Parties

Article 4

In a mediation procedure, the parties shall enjoy equal rights.

In a mediation procedure, the parties shall be treated equally.

Mediators shall act independently and impartially.

Privacy of Procedure

Article 5

In a mediation procedure, the public shall be excluded.

Parties, their legal representation and proxies participate in the mediation procedure with the permission of the parties and third parties.

All third parties who participate in a mediation procedure shall respect the principle of confidentiality of mediation procedures.

Confidentiality

Article 6

All information, proposals and statements related to the mediation procedure shall be confidential unless otherwise agreed by the parties, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement, as well as when the public interest requires it.

Information, proposals and statements disclosed in the mediation procedure, exclusively for the purpose of settlement cannot be used in legal, arbitration or other procedures, nor can they be disclosed in any other way.

The court shall reject the information, proposals or statements under paragraph 2 above if presented.

The provisions under paragraphs 1 and 2 shall apply notwithstanding whether the legal, arbitration or other procedure relates to the disputable relation which is subject to mediation procedure.

Urgency

Article 7

Mediation procedures shall be considered urgent.

III. MEDIATION PROCEDURE

Opening of Procedure

Article 8

Unless otherwise specified in an agreement by the parties, the mediation procedure shall be opened with the adoption of the proposal for the initiation of the procedure.

Should the party having received the proposal for mediation fail to declare in favor of the mediation procedure within 15 days from the date of receipt of the proposal, or within the period specified in the proposal, the proposal shall be considered rejected.

Implementation of procedure

Article 9

The parties may agree condition for the implementation of the mediation procedure.

If the parties do not reach the agreement on condition for the implementation of the procedure, the mediator shall conduct the procedure under conditions he/she deems suitable, taking into account the circumstances of the disputable relation and the interests of the parties, and respecting the principle of urgency.

The mediator may interview the parties jointly or individually, and, with the consent of the party, may convey and present the proposals and positions on relevant issues to the other party.

The mediator may propose possible options for the settlement of the dispute, but shall not propose the final settlement solution.

Closure of procedure

Article 10

The mediation procedure shall be closed:

1. with the parties reaching an agreement;
2. with the decision of the mediator to close the procedure, upon consultations with the parties, if he/she deems that the continuance is not justified;
3. with the statement of a party on withdrawing from the procedure.

Legal expiration and preclusions

Article 11

Opening of the mediation procedure shall not interrupt the legal expiration of the claim.

Opening of the mediation procedure shall not influence the legal timelines for the instigation and conducting of the relevant procedure, except in cases when the mediation is a legal precondition for the instigation of such procedure under separate regulations.

IV. MEDIATION UPON OPENING LEGAL PROCEDURE

Instruction to Mediation

Article 12

Should the parties propose by a mutual agreement or should the court find that the dispute can be settled successfully through mediation, the parties shall be instructed to mediation.

The court shall instruct the parties to a mediation procedure upon the receipt of the defendant's statement or after the preliminary hearing is held.

The court may instruct the parties to mediation, at a later point in the course of a legal procedure, prior to its legally valid closure.

Duration of Procedure

Article 13

A mediation procedure shall not exceed 30 (thirty) days.

The court or other relevant authority may extend the mediation procedure duration due to a valid reason, at the request of the mediator or the parties.

Mediation in Appeal Procedure

Article 14

In an appeal procedure, the reporting judge shall, at the proposal of the parties and with their agreement, instruct the parties to a mediation procedure, giving a deadline of 30 (thirty) days for the termination of this procedure, and suspend the decision on appeal.

A mediator in the appeal procedure shall be a judge.

Continuation of Appeal Procedure

Article 15

If a mediation procedure has not been successful, within 30 (thirty) days from the date of instruction, the appeal procedure shall be continued.

Agreement Between Parties

Article 16

The effectiveness of the agreement reached in the mediation procedure, depends on the will of the parties and the form in which the agreement was made.

The mediator shall inform the parties about the implementations of the settlement agreement reached and on the means of fulfilling the obligations ensuing from such agreement.

At the request of the parties, the mediator shall take part in the formulation and drafting of the settlement agreement.

The settlement agreement reached during the mediation procedure, through the mutual compromise of the parties, closed before the start of a legal procedure or in the course of such procedure, shall have the character of an extrajudicial settlement, provided that it is made in writing and that it is not contradictory to the public order.

The mediator shall promptly inform the court before which the legal procedure had been filed about the settlement agreement reached in the mediation procedure.

The settlement agreement reached between the parties in the mediation procedure shall have the power of a court settlement, provided the judge files it in the court registry, after he finds that it complies with the public interest.

If the settlement agreement is not reached in the mediation procedure due to disagreement about legal issues, the parties may close a written agreement about the factual issues. Such agreement shall bind them in further proceedings, if certified by the mediator or other relevant authority and provided the parties consent to the disclosure of the information in the agreement.

Appropriate Application of the Law on Obligations and the Law on Legal Procedure

Article 17

The negotiations, effectiveness and termination of settlement agreements reached as a result of the mediation procedure shall be governed by the provisions of the Law on Obligations, regulating extrajudicial settlements, and the Law on Legal Procedure, regulating judicial settlements.

V. MEDIATOR

General Provisions

Article 18

A mediator is a third-party neutral person who mediates between two parties for the purpose of settling their dispute in compliance with the mediation principles.

Judges, lawyers and other prominent experts from different fields of expertise may act as mediators depending on the type of disputes in which they mediate.

List of Mediators

Article 19

The president of the court, i.e. head of other relevant authority shall appoint the mediator from amongst the prominent professionals (judges, lawyers, etc.) fulfilling the conditions for mediation stipulated by this Law and shall include him in the List of Mediators (hereinafter: the List) .

Mediators shall be appointed and included in the List at the request of the interested party, which could be submitted also through the mediators organization.

The president of the court, i.e. head of other relevant authority, shall notify the mediators organization about the inclusion of mediators in the List.

The maintenance of the List shall be regulated in greater detail by the Minister of Justice.

Requirements for Conducting Mediation

Article 20

Mediator must fulfil the following requirements:

1. A university graduate;
2. Minimum five years relevant work experience in dispute and conflict settlements;
3. Taken training programme for mediators;
4. Registered in the List;
5. Not under investigation and with a clean criminal record;
6. Possess integrity of performing mediation role.

Exceptionally, a mediator may be also a person not fulfilling all the conditions under Para. 1 Items 1 – 4 above, if he/she has special experience and knowledge in the field of mediation.

In disputes with a foreign element, a mediator can be a foreign citizen, provided that he is authorized to perform mediation internationally, with consent of the parties.

The program for the training of mediators shall be specified by the Minister of Justice.

Appointment of Mediators to Specific Cases

Article 21

In case of mediation prior to opening court or other procedure, the parties shall agree on a mediator or shall address the president of the court, i.e. head of other relevant authority, with the request to appoint a mediator for the List.

If the mediation is conducted after a court or some other procedure is opened, the parties shall agree on a mediator from the List.

Should the parties fail to reach the agreement, the president of the court, i.e. head of other relevant authority, shall appoint a mediator from the List in the listed order.

Exclusion of Mediators

Article 22

A mediator must be excluded from the mediation procedure in case the mediator is the presiding judge, arbitrator or the court for the same parties in other dispute, or is the person who acts or has acted on behalf of the parties in other dispute.

A mediator cannot be a lawyer representing or having represented the parties in the procedure, or who is or used to be their legal representative or guardian.

Exemption of Mediators

Article 23

A mediator must be exempted from the mediation procedure in case he has personal interests, or in other circumstances raising doubts about his/her impartiality.

A mediator shall inform the parties about all the circumstances that may raise doubts about his/her impartiality.

A mediator may conduct the mediation procedure also in the case referred to in Para. 1 above, provided that the parties, after they have been informed about the existence of such circumstances, mutually agree that he/she may conduct the mediation.

Appropriate Application of Law

Article 24

The exclusion and exemption of mediators shall be governed by the provisions of the separate laws on exclusion, i.e. exemption.

Mediators' Obligations

Article 25

A mediator shall conduct and conclude the mediation procedure without unnecessary delays.

A mediator cannot impose a solution on the parties.

A mediator shall conduct mediation in a neutral way, without any prejudices regarding the parties and subjects to a dispute.

A mediator cannot make any promises and shall not guarantee the specific outcome of the procedure.

Mediators' Rights

Article 26

A mediator has the right to be informed about the circumstances of a disputable relation.

The parties shall present to the mediator all necessary information and their view of the disputable relation.

The parties shall present to the mediator the evidence necessary for the evaluation of the compliance of a settlement agreement with the public interest.

A mediator shall be entitled to reimbursement of expenses.

Mediators' Liability

Article 27

A mediator shall be held liable for any damage caused to the parties by his illegal actions, in compliance with the general rules on liability for damages.

VI. COST OF PROCEDURE

Cost Settlement Agreement

Article 28

The parties may agree on the settlement of the costs of mediation.

Advance Cost Settlement

Article 29

The parties shall advance the costs of settlement in equal parts.

Final Cost Settlement

Article 30

When the mediation procedure is completed with a final settlement agreement, each of the parties shall bear their own expenses and share the mediator's expenses in equal parts, unless otherwise stipulated in the agreement.

When mediation has not been successful, and the mediation was required in the procedure of the settlement of disputable relations, the decision on payment of mediation expenses shall be made in litigation or other procedure, along with the final decision.

When mediation has not been successful, and the parties instigated the mediation procedure prior to the procedure of the settlement of disputable relations, each of the parties shall bear their own expenses and share the mediator's expenses in equal parts.

The expenses shall be determined in accordance with the attorney's fees scale .

VII. TRANSITIONAL AND FINAL PROVISIONS

Article 31

Within 90 days from the date of this Law coming into effect, the Minister of Justice shall adopt bylaws on the implementation thereof.

Article 32

This Law shall enter into force 8 days from the date of its publication in the "Official Gazette" and its enforcement shall be deferred for 90 days.