Mediation in EU countries

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France

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Rather than going to court, why not try to resolve your dispute through mediation? This is a form of alternative dispute resolution (ADR), where an Ombudsman assists those involved in a dispute in reaching an agreement. In France, the government and legal professionals are aware of the advantages of mediation, and the legislature strongly encourages its use.

Who to contact?

In France, there is no central or government authority responsible for regulating the profession of Ombudsman.

There is no national, official website relating to mediation. However, there is a mediation section on www.justice.fr and on the website of the public Company Ombudsman service or on the website for administrative mediation.

Each court of appeal publishes lists of Ombudsmen in civil, social and commercial matters. These lists were established by Article 8 of Law No 2016-1547 of 18 November 2016 on the modernisation of the 21st-century justice system. While their main purpose is to inform judges, they may also be shared with litigants by any means. They are available on the websites of the relevant courts of appeal.

In which area is recourse to mediation admissible/most common?

Parties may refer a matter to mediation at any time and in any area of law, except for those areas falling under « rules of public policy ». For example, mediation cannot be used to circumvent mandatory rules on marriage or divorce.

Mediation is practised in various fields, for example:

- neighbourhood disputes
- disputes between landlords and tenants
- family disputes
- human relations disputes within organisations
- disputes between companies, in the execution of a contract or any other conflict situation
- disputes between companies and the banking system
- disputes involving public procurement or disputes with state administrations, public establishments or local authorities.

What are the rules?

Recourse to mediation

Law No 95-125 of 8 February 1995 on the organisation of courts and civil, criminal and administrative procedure introduced civil mediation into French law.

Order No 2011-1540 of 16 November 2011 transposed EU Directive 2008/52/EC into French law. The Directive establishes a framework to facilitate the amicable resolution of disputes by the parties, with the aid of a third party, the Ombudsman. The Order broadened the scope of the provisions in the Directive to cover not just cross-border mediation but also internal mediation, with the exception of disputes relating to an employment contract or involving administrative law within the sovereign power of the State.

This Order of 16 November 2011 also amended the Law of 8 February 1995 so as to establish a general framework for mediation. It defined the concept of mediation, described the conditions the Ombudsman must meet, and confirmed the principle of confidentiality, which is vital to the success of the mediation process.

Since 2010, the Company Ombudsman, appointed by decree of the President of the Republic and placed under the Minister of the Economy, Finance and Recovery, offers a free and confidential mediation service to public and private stakeholders. In this way, the Ombudsman participates in the public interest objective of developing alternative dispute resolution methods. The Ombudsman can be called upon in disputes between companies, in the performance of a contract or any other conflict situation, or in the event of disputes involving public procurement or disputes with State administrations, public establishments or local authorities.

Finally, the Code of Administrative Justice includes a section dedicated to administrative mediation requested by the parties or the court (see Article L. 213-1 et seq.).

Mediation by agreement:

The parties may decide to consult an Ombudsman of their own accord. They need not go to court to do this.

In any case, parties who have applied to a court to rule on their dispute can still, if they agree, resort to an amicable means of resolving it, by calling upon an Ombudsman.

Court-ordered mediation:

If an action has been brought before a court: ‘the court hearing the dispute may, with the consent of the parties, appoint a third party to ascertain the parties’ positions and to compare and contrast their points of view with a view to finding a solution to the dispute’ (Article 131-1 of the Code of Civil Procedure).

In family matters, in the specific fields of the exercise of parental authority or interim measures in divorce cases, the court may also direct the parties to attend a briefing meeting on mediation, which is free of charge, and which cannot give rise to any penalty (Articles 255 and 373-2-10 of the Civil Code).

Law No 2019-222 of 23 March 2019 on programming for 2018-2022 and justice system reform introduced post-ruling mediation in Article 373-2-10 of the Civil Code:

‘Should the parties disagree, the court shall endeavour to reconcile them.

To help the parents agree on the exercise of parental authority, the court may suggest that they engage in mediation, unless there are allegations that one parent has behaved violently towards the other parent or the child. If the parents agree to mediation, the court may appoint a family Ombudsman to this end, including in the final decision on how parental authority should be exercised.

Unless there are allegations that one parent has behaved violently towards the other parent or the child, the court may also direct the parents to meet with a family Ombudsman, who will inform them of the purpose and course of the mediation measure’.

The court may also propose mediation in administrative matters: ‘when an administrative tribunal or an administrative court of appeal hears a dispute, the chair of the judicial panel may, with the consent of the parties, mandate mediation to try to obtain an agreement between them’ (Article L. 213-1 of the Code of Administrative Justice). The same rules apply before the Council of State, the supreme court of the administrative order (Article L. 114-1 of the Code of Administrative Justice).

The injunction for mediation

If an action has been brought before a court and the parties have not agreed to mediation, 'the court may order them to meet with an Ombudsman responsible for informing them of the purpose and course of a mediation measure within a period of time determined by the court (...).' (Article 127-1 of the Code of Civil Procedure).

'Mandatory' mediation

Recent legislative developments have made it mandatory, under French law, to use mediation in certain circumstances.

Article 7 of Law No 2016-1547 of 18 November 2016 on the modernisation of the 21st-century justice system introduced, on an experimental basis, a requirement to attempt family mediation prior to court referral in 11 courts. The experiment was initially scheduled to conclude at the end of 2019, but was extended until 31 December 2020 and then until 31 December 2022.

Anyone wishing to amend a family court decision or a provision of a court-approved agreement must attempt family mediation before referring the matter back to the court. If this is not done, the application for amendment will be inadmissible.

This applies to applications concerning:

- the child's place of habitual residence;
- visiting rights and the right to have the child to stay;
- a parent's contribution to the education and maintenance of a minor child;
- decisions relating to the exercise of parental authority.

It is not mandatory to attempt family mediation before returning to court if:

- there is abuse by one parent against the other parent or against the child or there is an application to approve an agreement between the parties,
- in the court's assessment, there is another legitimate reason not to require the parties to attempt mediation before returning to court.

Law No 2019-222 of 23 March 2019 on programming for 2018-2022 and justice system reform made it mandatory to use an alternative form of dispute resolution, such as mediation, for claims for payment of a sum not exceeding EUR 5,000 relating to a dispute between neighbours or an abnormal neighbourhood disturbance. Before such applications can be referred to court, the parties must, at their discretion, undergo an attempt at conciliation led by a legal conciliator, an attempt at mediation or an attempt at a participatory procedure. If they do not do this, the court may rule of its own motion that the application is inadmissible. However, the law provides for five exceptions:

- if at least one of the parties is requesting that the court approve an agreement;
- if an appeal must be brought before the body that issued the decision ahead of referral to a court;
- if recourse to one of the means of amicable dispute resolution mentioned in the first subparagraph is unavailable for a legitimate reason, particularly if legal conciliators are not available within a reasonable period; or
- if there is a specific provision requiring the court or administrative authority to make a prior attempt at conciliation;
- if the creditor has unsuccessfully initiated a simplified small claims procedure.

Disputes before the administrative court may be subject to compulsory prior mediation, free of charge and with an Ombudsman appointed for each type of dispute. Currently, compulsory prior mediation is provided for disputes concerning decisions of Pôle emploi and for certain decisions concerning certain public officials (see decree No 2022-433 of 25 March 2022 relating to the compulsory prior mediation procedure applicable to certain civil service disputes and to certain social disputes).

Criminal mediation

In accordance with Article 41-1 of the Code of Criminal Procedure, if it appears that such a measure is likely to ensure compensation for the damage caused to the victim, remove the harm resulting from the offence or contribute to the rehabilitation of the perpetrator, the public prosecutor may, prior to their ruling on public proceedings, directly or through an Ombudsman of the public prosecutor, arrange for mediation between the perpetrator and the victim, at the victim's request or with their agreement.

Criminal mediation allows the victim and the perpetrator of an offence to actively participate in resolving the issues resulting from the offence and make reparation for the damage of any kind caused by the offence. This process is carried out by a criminal Ombudsman appointed by the public prosecutor and must allow the victim to express themselves freely, to relate the facts and to make their expectations known with regard to the harm suffered and the reparation sought. Through direct confrontation with the victim, the perpetrator must become aware of their actions and their consequences in order to prevent repeat offences.

If the criminal mediation measure is not carried out because of the perpetrator's behaviour, the public prosecutor may initiate proceedings, unless new evidence emerges. Criminal mediation has been prohibited in cases of violence committed within a couple under Article 132-80 of the Criminal Code since Law No 2020-936 of 30 July 2020 aimed at protecting victims of domestic violence.

Rules governing mediation

The national 'code of ethics' for Ombudsmen is the one adopted by the EU.

Company Ombudsmen also base their intervention on public principles of action.

'Accredited' family mediation services – that is, services that receive public funding from the Family Allowance Fund, the Agricultural Mutual Benefit Fund and the Ministry of Justice – undertake to comply with certain standards relating to the provision and quality of these services; these standards are set down in a national reference framework.

An ethical charter for Ombudsmen in administrative disputes was adopted in 2017 for administrative mediation.

Finally, Decree No 2017-1457 of 9 October 2017 on lists of Ombudsmen at courts of appeal laid down conditions for inclusion on such a list. These conditions stipulate that Ombudsmen must:

1. have no convictions, declarations of unfitness or disqualifications listed on Bulletin No 2 of their criminal record;
2. not have committed any acts contrary to honour, probity and morality that gave rise to a disciplinary or administrative sanction taking the form of removal, suspension, termination, withdrawal of approval or withdrawal of authorisation;
3. have proof of training or experience attesting to their aptitude to practice mediation, for natural persons and for legal persons: each natural person who is a member of the legal person and who carries out the execution of mediation measures must meet the conditions laid down for natural persons.

Information and training

At present, French legislation does not make any provision for specific training in mediation.

There is a state diploma for family Ombudsmen (DEMF). Obtaining this diploma is not a necessary condition to practise family mediation. However, it is required in order to work in an accredited family mediation service.

In criminal matters, natural persons as well as properly declared associations are authorised to carry out mediation functions in the jurisdictions of the judicial courts and the courts of appeal according to the procedures set out in Articles R. 15-33-30 of the Code of Criminal Procedure. Ombudsmen receive a minimum of 35 hours of initial training as well as ongoing training for the rest of their working lives.

How much does mediation cost?

When parties resort to mediation as an alternative method of resolving disputes, whether in court proceedings or out of court, fees have to be paid.

Mediation is free of charge when one of the many public service mediations is used or when it is ordered in criminal matters. The same applies when it is a mandatory prerequisite for an appeal to the administrative court.

Ombudsmen's fees may be covered by legal aid, as provided for in Articles 118-9 et seq. of Decree No 91-1266 of 19 December 1991. However, these fees cannot exceed EUR 256 for one party or EUR 512 for all parties.

For court-ordered mediation, they will be determined by the judge assessing legal costs upon completion of the Ombudsman’s work, on presentation of a report or a statement of expenses (Article 119 of Decree No 91-1266 of 19 December 1991). The judge who assesses the legal costs fixes the amount of the deposit and the remuneration (Articles 131-6 and 131-13 of the Code of Civil Procedure). The legislation does not lay down any precise scale of remuneration, and therefore the unit cost for the provision of family mediation services varies.

Publicly funded mediation services undertake to apply a national scale for families’ financial contribution to the cost. The financial share to be borne by each party per mediation meeting ranges from EUR 2 to EUR 131, depending on the parties’ income.

Is it possible to make the mediation agreement enforceable?

When the parties reach an agreement, it is binding upon them, as with any contract.

It is possible, if the parties so wish, to make it enforceable by submitting it to the competent court for approval (see Article 1565 of the Code of Civil Procedure; Article L. 213-4 of the Code of Administrative Justice), or according to the law of 22 December 2021 by the clerk's office of the court on the lawyer’s deed.

Where court proceedings have been brought, Article 131-12 of the Code of Civil Procedure provides that on application by the parties, the court hearing the case may approve an agreement that the parties submit to it.

Article L111-3 1 of the Code of Civil Enforcement Procedure provides that agreements concluded following court-ordered mediation or out-of-court mediation which are made enforceable by the ordinary courts or the administrative courts are enforceable documents.

Regarding criminal mediation, Article 41-1 5 of the Code of Criminal Procedure provides that if the offender has undertaken to pay damages to the victim, the latter may, in light of this report, request recovery of the damages in line with the injunction to pay procedure, in accordance with the rules laid down in the Code of Civil Procedure.

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