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Principles and stages

Mediation is characterized by some key principles which are common to the different systems in the EU Member States. No matter the mediation model being applied, the following stages of mediation can be identified.

Key Principles

Impartiality

Mediators are neutral and will not take sides in any dispute. Mediators are not advisers and will not give advice on individual positions and will usually recommend that legal advice is sought alongside the mediation process.

Confidentiality

Generally, what you say in mediation and the provide documents cannot be used as evidence in court in the same case. Neither can a mediator testify.

Voluntary nature of mediation

Parties in conflict must be informed of mediation as an additional option to resolve their conflict. The refusal to attempt the mediation has no influence on the outcome of a court's decision.

This principle is not contradictory to mandatory mediation information sessions or even mandatory mediations, as long the parties are not forced to settle their conflict through mediation.

Stages of mediation

1. Opening: the mediator sets the stage

The mediator starts by explaining the purpose of mediation, the process and the mediator's role within it. The mediator sets rules and asks of each party to agree to this specific process.

2. The statement of the problem by the parties

The mediator listens to each party when they tell their story.

He acknowledges feelings and assures parties when needed and he identifies the concerns of each party.

3. Identification of the issues and determination of the agenda for negotiation

During this stage, the mediator sets the agenda for the negotiation by summarising areas of agreement (similar concerns) and disagreement. The mediator determines in consultation with the parties the issues to be discussed.

4. Generating options/solutions

The mediator helps the parties, by brainstorming with them, to consider a variety of options/solutions for their situation.

5. Considering the options and selecting the most workable/acceptable option/solution

During this stage, the mediator helps the parties move toward an agreement by considering the options generated and selecting those most workable and acceptable to each party.

6. End of mediation

Reaching an agreement

The mediator assists the parties in the writing of a clear and detailed agreement.

Legal representatives can review the mediated agreement to ensure that this agreement has legal effect in all the legal systems concerned.

No agreement

If parties do not reach an agreement, the mediator summarizes issues identified and any progress made. The mediator thanks the parties and ends the mediation session. Parties are free to file or pursue a lawsuit in court.

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