

Cross-border family mediation - Romania



Law No 192/2006 regulates mediation and the organisation of the profession of mediator and includes general provisions, provisions on the profession of mediator (certification as a mediator, suspension and barring from service, the Mediation Council, organisation and practise of the profession of mediator, the mediator's rights and obligations, the mediator's liability), the mediation procedure (the procedure prior to concluding the mediation agreement, the mediation agreement, the mediation process, the completion of the mediation procedure), and special provisions on family disputes and criminal matters.

The parties may participate in the information meeting on the advantages of mediation, including, where applicable, after legal proceedings have been initiated before the competent court, with a view to settling disputes using this method. The proof of participation in the information meeting on the advantages of mediation is the information certificate issued by the mediator who delivered the information. The procedure for informing on the advantages of mediation may be conducted by the judge, the prosecutor, the legal adviser, the lawyer or the notary, and in such cases it is attested in writing.

The subject matter of mediation may not include strictly personal rights, such as those regarding a person's status, or any other rights the parties may not exercise pursuant to an agreement or any other act.

The mediation activity is conducted equally for all persons, irrespective of race, colour, nationality, ethnic origin, language, religion, gender, opinion, political membership, wealth or social origin.

Mediation is an activity of public interest. In the exercise of duties, the mediator does not have decision-making powers as to the content of the settlement to be reached by the parties, but he/she may guide them in verifying its lawfulness. Mediation may take place between two or several parties. Parties have the right to choose their mediator freely. Mediation may be conducted by one or several mediators. Judicial and arbitration bodies, and any other authorities vested with jurisdictional functions, inform the parties of the possibility and advantages of using the mediation procedure and urge them to use this means in order to settle their disputes.

The parties may ask the notary public to authenticate the settlement. The document drawn up by the notary public, authenticating the settlement in the mediation agreement, is enforceable.

The parties to the mediation agreement may appear before the court in order to apply for a decision that endorses their settlement. The competent authority is either the district court with jurisdiction where any of the parties has the domicile/place of residence /registered office or the district court with jurisdiction where the mediation agreement has been concluded. The decision whereby the court endorses the settlement of the parties is delivered in camera and is enforceable.

Special provisions on family disputes. Mediation can be used to settle disagreements between spouses as regards continuation of marriage, division of marital assets, the exercise of parental rights, establishment of the children's domicile, parents' child support contributions, or any other disagreements arising between spouses regarding rights they may enjoy by law. Mediation agreements concluded between parties in matters/disputes involving the exercise of parental rights, the parents' child support contributions, or establishment of the children's domicile take the form of consent judgments.

The spouses' agreement on the dissolution of marriage and the settlement of ancillary divorce issues is submitted by the parties to the court competent to issue a judgment of divorce.

The mediator ensures that the outcome of mediation is not contrary to the best interests of the child, encourages parents to focus first and foremost on the child's needs and ensures that taking parental responsibility or the de facto separation or divorce does not have a detrimental effect on the child's upbringing and development.

Before concluding the mediation agreement or, where applicable, during the procedure, the mediator performs due diligence to check whether there is an abusive or violent relationship between the parties and whether the effects of such a state of affairs are likely to influence the mediation, and decides whether in such circumstances settlement by mediation is appropriate. If, during the mediation, the mediator becomes aware of facts that endanger the child's upbringing or normal development or are considerably detrimental to the best interests of the child, he/she must report the issue to the competent authority.

Law No 217/2003 on preventing and combating domestic violence contains provisions on the institutions entrusted with duties in regard to preventing and combating domestic violence (whose duty is to guide the disputing parties towards mediation), the establishments for preventing and combating domestic violence (including support centres intended for aggressors, which provide counselling and family mediation services, with the possibility of subjecting domestic violence matters to mediation at the parties' request), the protection order and funding in the field of preventing and combating domestic violence.

Under civil proceedings, the judge recommends to the parties to settle their dispute amicably by mediation and, throughout the proceedings, he/she attempts to reconcile the parties, by providing them with the required guidance.

In disputes that may be subject to the mediation procedure, the judge may call for the parties to attend the information meeting on the advantages of using this procedure. Where he/she deems it necessary, considering the circumstances of the case, the judge recommends to the parties to use mediation in order to ensure the amicable settlement of the dispute at any stage of the court proceedings. Mediation is not mandatory for the parties.

If the judge recommends mediation, the parties (if they had not attempted to settle their dispute by mediation before they filed a lawsuit in court) are to appear before the mediator in order to be informed of the advantages of mediation. After receiving the information, the parties decide whether they accept to settle their dispute by mediation.

If the parties reconcile, the judge endorses their settlement in the judgment he/she delivers.

In the case of divorce, the application for divorce may be accompanied by the agreement reached by the spouses through mediation on the dissolution of marriage and, where applicable, on the settlement of ancillary divorce issues.

Law No 272/2004 on the protection and promotion of children's rights includes provisions on children's rights (civil rights and freedoms, alternative family environment and care, child's health and welfare, education, and recreational and cultural activities), provisions on special protection for children who are temporarily or permanently deprived of their parents' protection (fostering, emergency fostering, specialised supervision, and monitoring the application of special protection measures), provisions on the protection of children (refugees or in the event of armed conflict, children who have committed a criminal offence but are not held liable under criminal law, against abuse, neglect, or exploitation, including economic exploitation, against drug abuse and any form of violence, children whose parents are abroad for work, and against kidnapping or any form of trafficking), provisions on institutions and services entrusted with duties in the area of child protection at central and local level, private organisations, and funding for the child protection system.

The public social care service has the obligation to take the required action in order to ensure the early detection of risk situations that can result in a child being separated from his/her parents and to prevent abusive behaviours from parents and domestic violence. Any case of a child being separated from his/her parents and any restriction of the exercise of parental rights must be preceded by the systematic provision of services and benefits provided for by law, with particular emphasis on properly informing the parents and counselling them, and therapy or mediation provided under a service scheme.

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